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Jury Trial

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

v.

18 CR 124 (JPO)

LEONARD MATHEWS,

Defendant.

-----x

New York, N.Y.
October 1, 2018
9:30 a.m.

Before:

HON. J. PAUL OETKEN,

District Judge

APPEARANCES

GEOFFREY S. BERMAN

United States Attorney for the

Southern District of New York

JUSTIN VICTOR RODRIGUEZ

DOMINIC A. GENTILE

EMIL JOSEPH BOVE, III

Assistant United States Attorneys

BARASCH MCGARRY SALZMAN PENSON & LIM

Attorneys for Defendant MATHEWS

BY: BRUCE KEVIN KAYE

ALSO PRESENT: Sabrina Parisi, Paralegal

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1 (Trial resumed; jury not present)

2 THE COURT: Good morning, everyone.

3 Any preliminary matters to address?

4 MR. RODRIGUEZ: Your Honor, just a few things from the
5 letter that we filed over the weekend on Saturday. First of
6 all, in response to the request from Mr. Kaye, the government
7 has no objection to the Court including the language from
8 United States v. Berk in its charge. The government also
9 recited some authority for the Court following the charging
10 conference about the instruction on false exculpatory
11 statements. We think the authority we cited --

12 THE COURT: We reviewed the letters and given the
13 parties agreement on the language from Berk, I changed the
14 language that I had in there to the precise language proposed
15 by defense counsel on that. I agree with you on false
16 exculpatory statement. So we put in the language which is
17 verbatim from standard Sand Instruction I believe and then you
18 were to go on.

19 MR. RODRIGUEZ: The next issue being the instruction
20 on New York conspiracy law for purposes of ^the -- we've laid
21 out some New York State law on that issue as well. And again,
22 we think the language that the Court had in its draft
23 instructions should be retained because it's consistent with
24 that law.

25 With respect to the special interrogatories on Count

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1 Four, the government addressed some of the questions that
2 defense counsel raised about the Roseman case and the knowledge
3 requirement in that case. And specifically, I think as it
4 relates to the discharge, the fact that there's no mens rea
5 requirement in the statute for the discharge. So again, I
6 think the draft instructions are all correct in that regard as
7 well.

8 And then finally, your Honor, there is the issue --
9 well, two other issues. We spoke at the charging conference
10 with respect the motive requirement for the ^buy cars use of
11 language at least in part. I believe the defense had an
12 objection to that. And as we laid out in our letter, that is
13 language that the Second Circuit has approved of before,
14 specifically, in the Soto case but the government would have no
15 objection to changing that language to conform it to other
16 language that's in Sands, I believe as well as language that
17 Judge Kaplan used in a similar charge using the language about
18 the defendants or the person's general purpose for --

19 THE COURT: Yes. So the last two points you mentioned
20 I agree with you and I've kept the charge as drafted from
21 Friday. On this point I've taken out at least in part in the
22 various place it appears I've kept in the Court's explanation
23 of purpose and the language that it does not have to be the
24 only purpose. I think that's adequate to make the point.

25 MR. RODRIGUEZ: Thank you, judge.

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1 Then finally, we made some requests following our
2 charge conference on Friday about the instructions that the
3 Court would give on aiding and abetting.

4 THE COURT: Hold on one second.

5 MR. RODRIGUEZ: This is just to make clear the jurors
6 the two different ways in which motive and gang related motives
7 are at play here. To make clear that it's not only the
8 defendant's motive to act the way he did to maintain or
9 increase his position in the gang but it's also relevant what
10 Juan DeJesus' motive was to maintain and increase his position
11 in the gang and if the defendant aided and abetted him in the
12 commission of those crimes.

13 THE COURT: Or willfully caused. So this is for
14 Counts One and Three?

15 MR. RODRIGUEZ: Correct, your Honor, yes.

16 THE COURT: Because it doesn't implicate two because
17 it's conspiracy.

18 MR. RODRIGUEZ: That's correct, your Honor.

19 THE COURT: Right. And I read your letter. I think
20 to make the changes throughout as the government has proposed
21 in the letter is actually confusing. So what I am proposing
22 and will shortly give you a clean version reflecting all of
23 this.

24 Let me find it.

25 (Pause)

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1 THE COURT: Rather than put in sort of in the
2 alternative or Juan DeJesus acted for that purpose, at various
3 points I think it might be simpler to have a single paragraph
4 the end of the fifth element explanation that says something
5 like the following:

6 Alternatively, I want to remind you that you may find
7 the defendant guilty of Counts One or Three under an aiding and
8 abetting theory of liability or willfully causing theory of
9 liability. Under either of these two theories of liability,
10 the government must prove beyond a reasonable doubt that
11 defendant aided and abetted or willfully caused DeJesus to
12 commit the alleged crimes knowing that DeJesus acted for the
13 purpose of gaining entrance to and maintaining a position in or
14 increasing a position in the Bloods.

15 My earlier instruction on element of purpose or motive
16 equally apply when you are assessing DeJesus' purpose.

17 MR. RODRIGUEZ: Thank you, your Honor.

18 MR. KAYE: I have no objection to that language.

19 MR. RODRIGUEZ: Just for the last piece of
20 housekeeping from the government, your Honor, we've prepared a
21 cart with all of the admitted exhibits from the trial, as well
22 as a clean laptop for the jury to view the digital evidence.
23 We've provided Mr. Kaye with the exhibit lists that we've
24 proposed to send back with the jury and we'll certainly give
25 Mr. Kaye an opportunity inspect the cart at lunchtime or

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1 whenever before it goes back to the jury.

2 THE COURT: Great. Thank you.

3 And thanks for looking into those issues over the
4 weekend I appreciate both sides follow-up. I know you've been
5 working very hard on those remaining issues. As I say, I'll
6 give you a paper version of the final clean version of the
7 charge in case you want to consult it just before or during
8 your summations. Although, obviously, I don't want you
9 instructing the jury because that's going to be my role.

10 Mr. Kaye, is there going to be any defense case?

11 MR. KAYE: Judge, I'm going to ask the Court to voir
12 dire the defendant on whether he is going to exercise his right
13 to testify.

14 THE COURT: OK. Right now?

15 MR. KAYE: Yes.

16 THE COURT: OK. Mr. DeJesus.

17 MR. KAYE: "Mathews".

18 THE COURT: I'm sorry. Mr. Mathews, would you mind
19 pulling the mic towards you.

20 You have had a chance to talk to Mr. Kaye about
21 whether you choose to testify in the case?

22 THE DEFENDANT: Barely. But I don't choose. I was
23 not prepped or I'm not going to do it so I choose not to
24 testify.

25 THE COURT: You understand have you a right to testify

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1 if you want to but you also have a right not to testify?

2 THE DEFENDANT: I understand that.

3 THE COURT: You have that right to make that decision.

4 THE DEFENDANT: Yes.

5 THE COURT: Have you had a chance to talk to Mr. Kaye
6 about that?

7 THE DEFENDANT: Very briefly, yes.

8 THE COURT: And you understand the fact that you do
9 have the right to testify or the right not to testify?

10 THE DEFENDANT: Yes.

11 THE COURT: OK. What's your choice?

12 THE DEFENDANT: I choose not to testify. I was not
13 prepped to.

14 THE COURT: OK. Anything else you think I need to
15 ask?

16 MR. KAYE: Whether this is a voluntary, knowing
17 decision on his part I think is appropriate to ask.

18 THE COURT: OK. Is it a voluntary decision not to
19 testify on your part?

20 THE DEFENDANT: I was not prepped to so, yes, I would
21 rather not testify.

22 THE COURT: But you choose not it testify? Is it a
23 voluntary decision on your part?

24 THE DEFENDANT: I mean, it's my decision, yes.

25 THE COURT: All right. And it's based on your

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1 understanding and knowledge that you have the right to if you
2 chose to?

3 THE DEFENDANT: Can you say that again please?

4 THE COURT: You have the right to testify if you chose
5 to; do you understand that right?

6 THE DEFENDANT: Yes, I understand that right.

7 THE COURT: And you still choose not to testify?

8 THE DEFENDANT: Yes. I was not prepped to testify, so
9 I choose not to testify.

10 THE COURT: OK.

11 MR. KAYE: Do you require me to say anything in
12 response to that?

13 THE COURT: Does the government have any proposed
14 questioning that needs to be asked?

15 MR. RODRIGUEZ: Your Honor, I think at this point
16 Mr. Mathews has to make a clear choice and not just, no, that
17 he wasn't prepped to testify. He is either making a choice to
18 testify or not and not just rely on this notion that he wasn't
19 prepped and so I think that that has to be put to him pretty
20 clearly.

21 THE COURT: OK. You have the right to testify if you
22 want to.

23 Do you understand that?

24 THE DEFENDANT: Yes.

25 THE COURT: And it's up to you whether you testify.

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1 You can choose to testify or you can choose not to. It's your
2 choice.

3 THE DEFENDANT: I choose not to testify because I was
4 not prepped to testify like other people. I am not ready to
5 get up on the stand. I would like to get up on the stand but I
6 don't want to damage anything else that's been damaged. I was
7 told not to and I'm not going to get on the stand.

8 THE COURT: When you say you were not prepped, do you
9 want --

10 THE DEFENDANT: I have no -- I am just not going to
11 get on the stand and that's just it and I don't know what's
12 expected to come from me, me being in this courtroom around all
13 these Harvard people, I'm not used to it. So I'm out of my
14 element of norm. So for me to stay in my norm I will not get
15 on there and testify to jeopardize or do anything that's, I'm
16 not supposed to be --

17 THE COURT: Well --

18 THE DEFENDANT: -- put this a certain type of way.

19 THE COURT: Right. But Mr. Kaye has been your counsel
20 for many months. You have had a chance to meet with him many
21 different times.

22 THE DEFENDANT: A few times.

23 THE COURT: You do have a right to testify.

24 THE DEFENDANT: I know that and I choose not to
25 testify.

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1 THE COURT: OK. Thank you.

2 Anything you want to add, Mr. Kaye?

3 MR. KAYE: I don't think it's appropriate for me to
4 put on the record the private conversations I have had with my
5 client, but suffice it to say that I have been to see him
6 multiple occasions. I think the Court is well aware that our
7 relationship has been strained at times and then there are
8 periods when there's cohesiveness and clarity. I did go to see
9 him last night -- I'm sorry -- yesterday morning. And spent
10 several hours with him. But admittedly, we went back to a
11 period of tension and I did leave and it is not all together
12 clear to me when I left what his intentions were, which is why
13 I asked the Court to engage in this voir dire with him.

14 Needless to say although, it's the 11th hour, if he
15 wants to testify then I will request an opportunity to speak to
16 him in the back and spend some time with him right now even
17 though it may disrupt the timing of the proceedings. So that's
18 a decision that I would ask him to make and if that is what he
19 wants to do, then I would request leave of court to do that.

20 THE COURT: How long do you think something like that
21 would take if he chose to take advantage of it?

22 MR. KAYE: A few hours.

23 THE COURT: Well, Mr. Mathews, let me ask you this.
24 It's ten o'clock. If we took an hour or two, even two hours to
25 give you an opportunity to speak with Mr. Kaye, would that

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1 change your decision as to whether you'll voluntarily testify
2 in the case.

3 THE DEFENDANT: I appreciate your leniency but, no.

4 THE COURT: It wouldn't change?

5 THE DEFENDANT: No.

6 THE COURT: Thank you.

7 So we'll go forward. Anything else for defendant's
8 case?

9 MR. KAYE: Defense is not going to call Detective Cole
10 and I'll rest in front of the jury.

11 THE COURT: All right. Everyone's ready for
12 summations?

13 MR. KAYE: Yes.

14 THE COURT: Mr. Gentile, you are doing the government?

15 MR. GENTILE: Yes, your Honor.

16 THE COURT: And rebuttal?

17 MR. GENTILE: Rebuttal is Mr. Rodriguez.

18 THE COURT: All right. Shall we bring the jury out?

19 (Jury present)

20 THE COURT: You may be seated.

21 Good morning ladies and gentlemen. Welcome back.
22 Hope you had a good weekend.

23 The government rested on Friday and now Mr. Kaye.

24 MR. KAYE: Good morning, ladies and gentlemen.

25 The defense rests.

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1 THE COURT: OK. Ladies and gentlemen, both sides have
2 rested. You heard all of the evidence in the case. You've
3 kept an open mind as I hope as I've instructed you and you've
4 heard a lot of evidence over the course of last week.

5 Now is the opportunity for each side to present what's
6 called a closing argument or summation. As with the opening
7 statements the summations or closing arguments are not evidence
8 but the parties, the lawyers for each side have an opportunity
9 to refer to the evidence, remind you of the evidence and try to
10 help you make sense of the evidence in the way that each side
11 would you like to view the evidence.

12 And toward that, we'll start with the government's
13 summation.

14 Mr. Gentile.

15 MR. GENTILE: Thank you, your Honor.

16 Exactly one week ago today the government stood here
17 and address you for the very first time. We told you that the
18 evidence in this case would prove that Leonard Mathews is a
19 member of a street gang called The Bloods and that Mathews and
20 other members of The Bloods conspired to shoot and kill someone
21 called Ike, also known as, "Isaac Toribio", because Toribio
22 bested Mathews in a street brawl on a corner that Mathews
23 controlled.

24 As the gang's "big homie" Mathews couldn't let this
25 humiliation go unanswered. So he ordered one of his gang

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1 members to shoot Toribio and worked with the gang to carry out
2 that plan. But as you know, that plan didn't go well. Instead
3 of shooting Toribio, three innocent bystanders were shot. All
4 three had nothing to do with the dispute between Mathews and
5 Toribio.

6 We also told you that the evidence would show that
7 Mathews and members of The Bloods or the Gangsta Milla Bloods
8 as they call themselves sold drugs in certain areas of the
9 Bronx that they controlled.

10 Ladies and gentlemen, we kept our word. The evidence
11 that was presented to you proves beyond a reasonable doubt that
12 Leonard Mathews is guilty as charged.

13 You heard testimony from a number of different
14 witnesses during this trial, witnesses who told you about the
15 fight that Mathews had with Toribio, "The Big Homie", when he
16 got into that fight with Toribio and was embarrassed. You
17 heard how he called his enforcer, Juan DeJesus, almost
18 immediately after the altercation. And how DeJesus and his gang
19 members rallied behind their leader on the corner of Creston
20 and Kingsbridge.

21 Ciara Edwards was there too that night and she told
22 you about what she saw and what she heard. She explained how
23 DeJesus told her that they had to put in some work for The Big
24 Homie and that DeJesus directed her to follow another gang
25 member to a location near by to get "the grip", street slang

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1 for a gun.

2 When Edwards returned Mathews directed her and DeJesus
3 into the backroom of the corner deli on Creston and
4 Kingsbridge. She was there when Mathews and DeJesus went to
5 Morris Avenue to hunt down and shoot Ike and as you all saw she
6 was there when DeJesus fired the shots that struck three
7 innocent bystanders.

8 Edwards described in great detail how after the
9 shooting Mathews, DeJesus and other members of the gang went
10 back to Mathews apartment on Jerome Avenue. Once inside the
11 apartment they went into Mathews bedroom where she handed
12 Mathews the gun. He proceed to wipe the gun down to remove any
13 fingerprints that might remain. Edwards told you about how
14 Mathews told her to "keep it low". In other words, keep your
15 mouth shut. She described how after walking out of defendant's
16 bedroom, Mathews, DeJesus and other gang members shut the door
17 and met briefly. Less than three hours later Ciara Edwards lay
18 dying in the street.

19 Edwards got on that stand and told you about
20 everything she did everything, she heard and everything she
21 experienced that night. You know she told you the truth
22 because of all the other evidence that was presented to you in
23 this case. Evaluate that evidence in light of the video
24 evidence that shows exactly what Mathews and DeJesus were doing
25 before, during and after the shooting. Evaluate her testimony

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1 in light of the information pulled from the defendant's
2 cellphone, the screen shots pulled from Facebook, the phone
3 company records and most importantly the defendant's own words.

4 In addition to the firsthand account Edwards provided
5 you, you also heard from one of the shooting victims who was
6 shot twice on October 20. Deeana Seabrooks told you about her
7 relationship with the defendant. She told you how she's been
8 purchasing crack cocaine from him for years and that for some
9 reason only a few days after she got out of the hospital he
10 gave her crack for free.

11 Keisha Hood took the stand and provided raw and
12 emotional testimony about her relationship with the defendant
13 and how frightened she was to be here. She described her years
14 long addiction to crack and her reliance on the defendant to
15 provide her with that crack. She also described the phone call
16 she received from the defendant on the night of the shooting
17 and how he told her that the defendant got someone to shoot
18 Toribio.

19 Before we talk about the other pieces of evidence that
20 we're going to go through today, I'd like to speak to you a
21 little bit about the charges that the defendant faces here.
22 I'll discuss them with you in a little bit more later on but
23 there are a few things that might help you sort out the
24 evidence as we go through it. I'll preface my remarks somehow
25 and later with a caveat that Judge Oetken's instructions on the

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1 law control.

2 The indictment charges the defendant with a total of
3 six counts. The first three counts charge Mathews with violent
4 crimes in aid of racketeering. These counts require proof of,
5 among other things, Mathews' membership in the enterprise.
6 That enterprise is the Bloods gang. These counts also require
7 proof that the enterprise engaged in racketeering activity.
8 That activity is drug trafficking and acts of violence
9 including the attempted murder of Isaac Toribio and the
10 attempted murder of Ciara Edwards.

11 Count One through Five all relate to the shooting on
12 the night of October 20, 2017. Count One charges the defendant
13 with the attempted murder of Toribio and the attempted
14 murder -- sorry -- Count Two charges him with conspiring with
15 one DeJesus and other members of the Bloods to kill Toribio.
16 Count Three There Throw charges Mathews with the assault of the
17 three innocent victims who were shot by mistake. Count Four
18 charges the defendant with aiding and abetting the possession
19 of a firearm during a crime of violence. count Five charges
20 him with aiding and abetting with possession of ammunition by
21 someone previously convicted of a crime punishable by more than
22 one year and count Six is a narcotics distribution count
23 involving distribution of more than 28 grams of crack cocaine.

24 The proof the government has offered is that Leonard
25 Mathews ordered the shooting of Isaac Toribio and that he

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1 worked with other gang members to carry that out. It's not the
2 government's theory that Mathews carried out the shooting
3 himself and nor do these charges require that he did. But I
4 expect that Judge Oetken will instruct you that with respect to
5 Counts One, Three, Four, Five and Six, that you may find the
6 defendant guilty if he aided and abetted these particular
7 crimes.

8 What's at the heart of this matter with respect to
9 those charges is that the defendant caused or ordered these
10 crimes to be committed.

11 Count Six on the other hand relates to the
12 distribution of crack cocaine. Defendant has all but conceded
13 this point. In fact, during our opening remarks Mr. Kaye
14 himself told you that Mathews was a petty street-level crack
15 dealer. His argument is not that Mathews is not a crack dealer
16 but rather, that his drug dealing is trivial at best. But
17 there is no triviality defense in the law. The terms of a
18 statute are what control and the government has proven that
19 charge through the evidence we're about to go through now.

20 So let's move to the evidence of the defendant's
21 membership in The Bloods, the Gangsta Milla Bloods. You may
22 recall that during the trial Mr. Kaye asked a number of the
23 government's witnesses whether they had ever heard Leonard
24 Mathews being called "The Big Homie". Well, the answer is
25 clearly "yes". Ciara got up there and told you that herself.

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1 In fact, she didn't know him by any other name than "The Big
2 Homie".

3 But there's another person who called him by that
4 name.

5 (Videotape playing)

6 So what should we take away from that video?

7 One: GMB, GMB. The defendant is proclaiming his
8 affiliation with the gang.

9 Two: Big Homies' on the set. Big Homie's on the set.
10 This is the defendant himself calling himself the big homie.

11 What else is important about in video? He refers to
12 himself as "Ls". And that will become important later on as we
13 go through the evidence.

14 But when the defendant says GMB, GMB, Big Homie's on
15 the set, you know what those words mean. You heard Detective
16 Jeselson, a 21-year veteran of the NYPD tell you about the
17 significance of the term "big homie". How it's a moniker for a
18 gang member with rank or seniority. He also told you about the
19 hand signs and social media hash tags that are commonly used by
20 Bloods members and that they use these hash tags to name their
21 sets.

22 Detective Jeselson told you about one of the ways
23 blood members are initiated into gang. Specifically, how they
24 can be blooded in or beaten by fellow gang members.

25 And he told you about the significance of the number

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1 21. So when the defendant shouts "GMB, GMB, Big Homies' on the
2 set" you know the meaning behind those words. And remember the
3 video we just viewed came from the defendant's phone and was
4 recorded by the defendant himself.

5 What are some of the other evidence found on the
6 defendant's phone? Well, there are his text messages. Here
7 you see Mathews communicating via text with someone identified
8 as GMB Piff and that Mathews is discussing Milla history and
9 using the acronyms Detective Jeselson told you about such as
10 EKG which stands for East Coast Gangster. Note the pattern of
11 replacing the letter "C" with the letter "K" so as not to use
12 the initials of their dreaded rival The Crips. You'll also see
13 GMB Piff listed in DeJesus' phone. There are additional text
14 where Mathews continues discussing Milla history and identifies
15 him as Gangsta Ls.

16 Even more text show the defendant speaking about UBN
17 lengo which Detective Jeselson identifies that acronym as
18 United Blood Nation.

19 There's also the video as narrated by the defendant
20 filming the beating of a new recruit for 21 seconds.

21 (Videotape playing)

22 MR. GENTILE: Twenty-one. On top of all this evidence
23 you heard Detective Cole get up there on the stand and testify
24 about what the defendant said to him on the car ride down to
25 court. "I'm a Milla Blood".

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1 Let's look at some of the other members of the GMB
2 set. First there's Juan DeJesus pictured on the left with the
3 defendant. Juan DeJesus, as we all know, is Mathews loyal foot
4 soldier and the person he called immediately after the fight
5 with Toribio. DeJesus' phone contacts contain evidence of his
6 relationship with the defendant as this picture shows and of
7 his membership in the gang. He listed Mathews as GMB Gangsta
8 "L".

9 Take note of the picture on the right where you can
10 see DeJesus and others, especially the person all the way on
11 the far right with the blades. He'll play an important role in
12 some of the evidence that we'll go through today.

13 When texting with others DeJesus identified himself as
14 Dolla Gangsta Milla Blood Two. And you heard testimony from
15 the Department of Corrections about how DeJesus as recently as
16 June 2018 admitted that he was a Bloods gang member.

17 Altagracia Coleman told you how she specifically
18 remembered the interviews she conducted with DeJesus and how he
19 told her on two separate occasions that he was a member of the
20 Bloods.

21 Other gang members include Antonio Avila a/k/a "Bigz
22 Milla" senior posing with Mathews on the right under the
23 "caption whole bunch of gangstas".

24 Look on the right next to the term "whole bunch of
25 gangstas" you'll see the red box "B". You see Mathews flashing

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1 the lower case "b" gang sign, a sign that Detective Jeselson
2 told you about. And look at how they post their messages.
3 They continue to use the "K" instead of the letter "C".

4 But you also heard testimony from Deeana Seabrooks
5 about how Bigz Milla sells drugs for the defendant, a fact
6 known to her because she was told that by the defendant and
7 because she bought drugs from Bigz Milla. There were times
8 when Seabrooks went to the defendant to buy crack and he
9 referred her to Bigz Milla telling her he has my work.

10 Where else do we see Bigz Milla? Here in the Bloods
11 video we just watched. You see him on the left wearing the red
12 shoes, the red beads and the red hoody, all colors of The
13 Bloods gang.

14 Anthony Avila's brother, Bigz Milla is David Avila,
15 a/k/a Drock Da Don. David Avila is another member of the
16 Gangsta Milla Bloods. And you were shown screen shots of him
17 from Facebook dressed in red posing with others including his
18 brother flashing gang signs as can be seen in these two photos
19 on the bottom.

20 What's significant about David Milla is that he was a
21 part of a pack of gang members seen with Mathews and DeJesus on
22 the night of the shooting on the corner of Kingsbridge Road an
23 Creston Avenue by the deli.

24 And then there's Francisco Padilla a/k/a "Frank White"
25 shown in this photograph with two men flashing gang signs. He

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1 was a gentleman I referred you to before in the picture with
2 DeJesus. Frank White was identified by both Edwards and
3 Seabrooks as one of the individuals surrounding the defendant
4 on the night of the shooting. His name was mentioned on a jail
5 call between DeJesus and Mathews after DeJesus' arrest for the
6 attempted murder of Ciara Edwards. Edwards also testified that
7 Frank White was one of the people who along with DeJesus, the
8 defendant and others, was present in the defendant's bedroom
9 after the shooting when Mathews wiped off the gun in an effort
10 to remove the fingerprints. And he was one of the people who
11 remained in the bedroom after Ciara Edwards exited and waited
12 outside.

13 To be clear, these aren't the only members of GMB as
14 represented in this photo which shows gang members including
15 Juan DeJesus gathered around for a group and using the hash tag
16 "GMB".

17 Here you see the contacts list of DeJesus' phone. And
18 if we go through just a few of them GMB Booda, GMB DNA, GMB
19 Flipp, GMB Gangsta L, these are all gang members.

20 But we know that Bigz Milla and Juan DeJesus and Frank
21 White are the ones who the defendant trusts the most. When
22 Mathews needed help after the October 20 fight with Toribio,
23 who did he call for backup? Juan DeJesus. When the defendant
24 was unable to accommodate his drugs customers, who did he send
25 them too? Bigz Milla. When defendant convened a meeting in

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1 his bedroom after the shooting, frank White was among those
2 included. Whereas Bigz Milla sells drugs for Mathews
3 generating the income that's so vital to the gang's existence,
4 Juan DeJesus inflicted punishment on those who challenged or
5 disrespected the gang, its turf, its members, especially its
6 big homie.

7 What I want to do now is go through a timeline with
8 you of evidence that you've already seen, video clips that
9 you've already seen. But I want to present them to you in a
10 chronological order to help you understand the events that
11 unfolded that night October 20, 2017.

12 As we go through these clips I am going to note the
13 time and each PowerPoint slide and I am also going to point you
14 to the government exhibit in the bottom right-hand corner of
15 each one. So, if there is any particular slide or piece of
16 evidence that you find particularly relevant, write it down and
17 you'll know what to look for during your deliberations.

18 I am going to walk through the shooting with you but
19 there are three locations that I want you to keep in mind.
20 There is the defendant's residence which as you know is located
21 next door to a laundromat and a place where the defendant sold
22 drugs. There's a deli on the right-hand side of this
23 PowerPoint slide on the corner of Creston Avenue and
24 Kingsbridge Road which served as sort of a base of operations
25 for the defendant and his crew. And then there's the scene of

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1 the shooting at 2693 Morris Avenue.

2 This, ladies and gentlemen is the heart of GMB
3 territory. At the deli you saw a number of different camera
4 angles. The entrance shown here with Mathews and Edwards
5 inside is an overhead shot on the inside.

6 Next, there are two outdoor angles, on pointing up
7 Creston on top and the other pointing down Kingsbridge Road
8 which can be seen on the bottom.

9 As you go through the videos please pay close
10 attention to the timeline in the clips and the screen shots as
11 they make clear how quickly the events of that night unfolded.

12 (Continued on next page)

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Summation - Gentile

1 MR. GENTILE: (Continuing) Here, you're going to see
2 Mathews and Toribio get into a heated discussion, and you will
3 see just how close Edwards is to the action. So when she told
4 you about the exchanges between Mathews and Toribio, she was
5 within inches of the two participants.

6 The time on this video is 9:42 p.m. And this is the
7 first of the videos leading up to the shooting.

8 In the next clip, Toribio appears to say something to
9 Mathews that forces him to respond.

10 As we go through these videos, ladies and gentlemen,
11 there's a lot going on, I know, but please keep an eye out for
12 the people around him: The guy walking into the picture now
13 with the blue backpack, the guy trying to break up the fight in
14 the red.

15 As you can see, ladies and gentlemen, Toribio did not
16 back down that night. Immediately after the fight -- we're at
17 9:49 p.m., six minutes later -- you see Mathews get on the
18 phone and call his enforcer, Juan DeJesus.

19 Here is another clip right after the fight, at
20 10:00 p.m. Isaac Toribio just walked out of view.

21 Whatever description you want to assign this fight --
22 whether it's a scuffle or a brawl -- clearly, Leonard Mathews
23 thought of it as something more.

24 We are now at 10:08 p.m. Minutes later,
25 reinforcements arrive: Juan DeJesus, Frank White, David Avila,

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Summation - Gentile

1 the man in the red, the guy with the blue backpack, and then
2 Ciara Edwards.

3 Next, you watch how the Big Homie rallies his troops
4 to plot revenge.

5 We're at 10:13 p.m. now. So who is in this video?
6 Juan DeJesus, Frank White, David Avila, blue backpack, and this
7 gentleman with the baseball cap.

8 So the next slide, we're at 10:25 p.m. You have
9 additional gang members showing up. Light blue hoody, Gap
10 hoody, pay close attention to these two individuals as well.
11 You'll see them throughout the videos that we watch, and you
12 will see them return after the shooting to Mathews' apartment
13 on Jerome Avenue.

14 After the plan to shoot Toribio was hatched, DeJesus
15 told Edwards that they had to put work in for the Big Homie.
16 Edwards told you how she was directed by DeJesus to go retrieve
17 the gun. Watch as Edwards follows the three members of
18 Mathews' gang down the block.

19 Remember, ladies and gentlemen, this is exactly how
20 Ciara Edwards explained it.

21 While Edwards is retrieving the gun, you can see
22 Mathews is still angry about the confrontation earlier in the
23 evening.

24 We're at 10:35 p.m. now. Less than five minutes
25 later, Edwards returns, and the defendant directs her and

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Summation - Gentile

1 DeJesus into the deli. Ladies and gentlemen, watch this video
2 closely, as it leaves little doubt who is in charge here.

3 At this point, Edwards has the gun in her waistband,
4 and he directs her into the deli right there.

5 The defendant is not just directing the activities of
6 DeJesus and Edwards, but everyone around him. Think to
7 yourself: Who is calling the shots here?

8 After being directed into the deli by Mathews, DeJesus
9 and Edwards go into the deli, so that DeJesus can make sure his
10 gun is locked and loaded. But before we get to that video,
11 these are the gestures that the defendant is making when
12 Edwards comes back with the gun.

13 We're now at 10:41 p.m.

14 Edwards told you what Mathews' instructions were, and
15 you just saw it on video. Mathews knew that DeJesus had a gun
16 because he just directed him into the deli to check it.

17 So the next two videos I want to play you, I'm
18 requesting to play side by side. They're two separate angles
19 of the deli, and they don't completely correspond timewise. So
20 I'm going to start one first, and then when it gets to a
21 certain point, I'm going to start the other, so that you will
22 see basically a 90-degree angle of the deli, you'll see the
23 overshoot, overhead angle out the front door, and then you'll
24 see the Creston Avenue side of the deli.

25 This is when DeJesus comes out of the deli after

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Summation - Gentile

1 checking the gun. We're at 10:42 p.m. here. He goes to the
2 corner with Mathews and has a private discussion with him.

3 At the same time, Edwards is still inside the deli.

4 They're both playing side by side now.

5 Watch Mathews as he crosses the street with the white
6 shoes. Edwards comes out is sent back in.

7 On the right-hand side, in the dark, you can barely
8 see the dark figure across the street.

9 David Avila now crosses the street over to where
10 Mathews is standing.

11 David Avila comes back. And now the light blue hoody
12 will be directing her out.

13 The screen on the right, you're going to see Mathews
14 cross the street and join Edwards and DeJesus walking up
15 Creston Avenue. The other gang members will now go down
16 Kingsbridge up towards Morris.

17 The next group of photos are still photos of the
18 videos we just viewed. I just want to point out to you the
19 important parts of the video. Mathews giving the instructions.
20 Look at his sneakers on the top left photo. He crosses the
21 street. As the bottom left photo shows, Edwards and DeJesus
22 walk up Creston from coming out of the deli, and you see those
23 white sneakers cross the street.

24 This is the route they traveled. So the deli is on
25 the corner of Creston and Kingsbridge. They come out of the

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1 deli, walk up Creston towards 196th Street, make the left, and
2 then the left again on Morris Avenue, up to the scene of the
3 shooting, at 2693. And, of course, we know what happens
4 minutes later.

5 Now, this video shows a 9:40 timestamp. We know
6 that's not correct. Based on all the other videos and all the
7 other evidence that you've been presented, we know that's an
8 hour off, at least. Here, you see what looks like Isaac
9 Toribio crossing the street, over by 2693 Morris Avenue. And
10 here comes DeJesus with Edwards in tow as he fires multiple
11 gunshots in the direction of Isaac Toribio.

12 You heard from the responding police officers and the
13 evidence collection officer about the spent bullet recovered in
14 front of 2693 Morris and the five shell casings that were
15 recovered near 2725 Morris.

16 After the shooting was over, you watched Mathews,
17 DeJesus, Edwards, and other gang members walking back to the
18 defendant's apartment, where Edwards gives Mathews the gun, and
19 he wipes it down.

20 We're now at 10:50 to 10:54 p.m. On the left, you'll
21 see one of the people I pointed out to you on the corner of
22 Creston and Kingsbridge on the top left. And to the left of
23 him that's not circled in red is Frank White.

24 On the top right, you'll see the defendant, and then
25 in the red box, you'll see the Gap and the guy with the light

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Summation - Gentile

1 blue hoody. The bottom left is DeJesus, and the bottom right
2 is Edwards.

3 These video and screenshots establish a clear timeline
4 of events for the night of October 20, 2017. From the time
5 that Mathews got into the fight with Isaac Toribio on the
6 corner of Kingsbridge and Creston to the time that he, DeJesus,
7 Edwards, and the other gang members arrived back at the
8 defendant's apartment on Jerome Avenue after the shooting, a
9 little less than an hour and ten minutes had elapsed.

10 The video evidence supports everything that Ciara
11 Edwards has told you. It supports her testimony about Mathews
12 being the big homie of the Gangsta Milla Bloods; about being
13 told by DeJesus to go get a gun; about how Mathews was with
14 DeJesus when they went to shoot Isaac Toribio, and it supports
15 her statements about being in the defendant's apartment after
16 the shooting.

17 How else do you know that the defendant is involved in
18 this shooting? Several hours after the shooting, in the early
19 morning hours of October 21st, the defendant gets a text
20 message from Juan DeJesus, and it says: "Yo, bro, don't talk
21 about today to no one, not even Cindy." Mathews writes back:
22 "Stop hit me like that. I'm grown. I love you to death, bro,
23 but dead. LOL. You're the only one who talk." Now, he didn't
24 send that message, and I think the reason he didn't send that
25 message is because it was so incriminating, because at

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Summation - Gentile

1 12:46 a.m., Ciara Edwards was getting stabbed or had just
2 gotten stabbed 16 times in St. Mary's Park.

3 But Mathews doesn't send this message. He deletes it
4 instead because he knows that they can't speak about it. And
5 Mathews meant what he said because only a week later, as he's
6 interviewed by Detective Maye, what does he do? He lies about
7 knowing Juan DeJesus.

8 He tells Detective Maye: "I don't know nobody in the
9 photos that you just gave me." Those photos were of Ciara
10 Edwards and Juan DeJesus.

11 The defendant told Detective Maye a bunch of other
12 lies that evening. He told them that he was at the deli on
13 Creston and Kingsbridge when the shooting took place, but
14 didn't hear about the incident until three or four days after
15 the fact. Then midway through the interview, Mathews admits to
16 being on the block of the shooting and hearing four shots being
17 fired. Mathews also told Maye that he was alone when the
18 shooting occurred and wasn't with Edwards or DeJesus, all of
19 which you know is not true.

20 These false exculpatory statements are evidence of
21 Mathews' consciousness of guilt. The whole time this is going
22 on, Mathews is checking the news every day to see if there are
23 any reports on the attack that he ordered DeJesus to commit.
24 These are just some of the searches that the defendant had on
25 his phone. "Innocent Bystander Shot in the Bronx; Suspect

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1 Sought."

2 By mid-November, it's no surprise that Juan DeJesus is
3 in jail and facing charges in connection with the shooting and
4 the attack on Ciara Edwards. But the defendant continued to
5 try and tie up loose ends, and in at least one conversation
6 with DeJesus, who was in prison at the time, the two men
7 discuss the severity of the charges DeJesus faced.

8 At one point, Mathews tells DeJesus that he tried to
9 see if he could have the little birdie disappear. We all know
10 what he means by that. We know what he means by that because
11 of DeJesus' response: "Once she's out of medical." Ciara
12 Edwards is out of the hospital at this point, on November 14,
13 2017, but these defendants don't know that.

14 During the same conversation, DeJesus and Mathews
15 discuss David Avila, who is Bigz Milla's brother and who was
16 presented on the corner of Creston and Kingsbridge on the night
17 of the shooting. And Mathews tells or reassures DeJesus that
18 he would send David Avila to help him out while he is in jail.

19 In addition to Edwards' testimony, you heard from two
20 of the victims who came here and provided testimony, even
21 though they both still live in the neighborhood that is home
22 turf to Mathews' gang. First, Deeanna Seabrooks told you about
23 what she experienced the night of October 20th, 2017, when she
24 was gunned down, and she told you about how she knew the
25 defendant and the members of his crew. Seabrooks admitted to

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Summation - Gentile

1 being a heavy crack user, and that she's been using crack for
2 years. And she told you about her strange twist of fate where,
3 after only a couple of days out of the hospital, she runs into
4 the defendant, and he gives her free crack. Why is that? To
5 keep her quiet.

6 For more years than she was able to remember,
7 Seabrooks told you about her crack habit and who she purchased
8 her drugs from. Leonard Mathews. Seabrooks testified that on
9 a regular basis, she purchased two bags of crack from the
10 defendant for many years, and that even though the defendant
11 typically charged her \$10 for each bag, he gave her free crack
12 two days or a couple of days after she got out of the hospital.

13 But that's how someone like Leonard Mathews operates;
14 when the wrong people get shot, he just gives them crack.
15 Seabrooks told you that there were many times when the
16 defendant would direct her to Bigz Milla, who worked with
17 Mathews and who, according to the defendant, has my work.

18 Keisha Hood also testified at length about her
19 dealings with the defendant and described her drug habit in
20 terms that were both tragic and astonishing. In the year
21 leading up to the shooting, Hood told you she purchased \$50
22 worth of crack from the defendant every single day. But you
23 know that Deeanna Seabrooks and Keisha Hood weren't the
24 defendant's only customers. How do you know that? Because he
25 was arrested in December of 2017 for selling crack.

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Summation - Gentile

1 Here, you see the defendant sell crack to an elderly
2 man with a cane. You heard from the officers who arrested him
3 that day and saw the events of December 12, 2017, unfold from
4 beginning to end. You saw Mathews exit his apartment building
5 after being called by this customer and responding to the
6 laundromat to provide him with the crack.

7 Even after his arrest in December 2017 for selling
8 crack inside the laundromat, the defendant didn't slow down.
9 The very next month, Detective Cole went into his apartment and
10 found crack cocaine. He found cocaine, a scale, and
11 drug-packaging materials. The items seized during the search
12 warrant and the photos Detective Cole took during his execution
13 further corroborate Ciara Edwards' testimony. These items were
14 recovered from the same bedroom that Ciara Edwards told you she
15 was in on the night of the shooting and the same bedroom she
16 left shortly before being stabbed 16 times by Juan DeJesus.

17 Edwards told you about the electronic scale and the
18 Ziploc bags she observed the defendant use to weigh and package
19 drugs. In fact, she identified the electronic scale in the
20 photos Detective Cole took as the same electronic scale she saw
21 when she was in the apartment with Mathews and DeJesus.

22 There is no real dispute that Leonard Mathews is a
23 drug dealer. You heard Mr. Kaye tell you that during our
24 opening remarks. But the government's case doesn't rest on
25 whether the defendant is a kingpin or a wholesaler of drugs.

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Summation - Gentile

1 The government alleges that the defendant, as a street-level
2 drug dealer, tried to have somebody killed who he felt
3 threatened his position as a big homie in the Gangsta Milla
4 Bloods. The amount of drugs the defendant distributed is only
5 relevant to the extent that he sold 28 grams or more of crack
6 cocaine, which, as demonstrated above, he clearly did, but
7 we'll go into the math later on.

8 But even a street-level crack dealer can wreak havoc
9 in a community. In fact, you need not look beyond Ciara
10 Edwards, Deeanna Seabrooks, or Keisha Hood, or the man with the
11 cane to understand the effects of the poison this man sells.
12 Each of those individuals bears scars from the epidemic that
13 the defendant promotes. For Deeanna Seabrooks, the elderly man
14 with the cane, and Keisha Hood, it's the effects of
15 consumption, whereas with Ciara Edwards, she's a casualty of
16 the violence that plays a part in the business of running a
17 drug ring.

18 We spoke briefly about the charges before, but I'm
19 going to say a little bit more about them. Before I do, I just
20 want to say, once again, that the instructions that Judge
21 Oetken will give you control.

22 As I stated before, the defendant is facing six
23 charges. Counts One, Two, and Three are violent crimes in aid
24 of racketeering. Counts Four and Five relate to firearms and
25 ammunition in connection with the shooting.

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Summation - Gentile

1 There are five elements for Counts One through Three,
2 and the government must prove beyond a reasonable doubt the
3 existence of, one, an enterprise. In this case, the enterprise
4 is the Bloods gang. Here, the defendant was a member of the
5 enterprise, or the Bloods, for years, going back as far as at
6 least 2014, as you saw in those Facebook posts that were
7 entered into evidence.

8 The second element is that the enterprise was engaged
9 in racketeering activity. The government alleges two
10 categories of racketeering activity that the government must
11 prove beyond a reasonable doubt: The attempted murders and
12 conspiracy to commit murder of Isaac Toribio and Ciara Edwards.

13 There's also the defendant's drug-dealing, which there
14 is little dispute about. Here, you not only heard about the
15 defendant's drug-dealing, but you saw him in action.

16 The third element is interstate commerce. You heard
17 testimony from the ATF special agent that the shell casings
18 that were recovered at the scene of the shooting were
19 manufactured outside of New York State. And, in addition, I
20 expect that Judge Oetken will instruct you that drug-dealing,
21 even purely local drug-dealing, has a substantial effect on
22 interstate commerce.

23 And, four, the violent crimes that the defendant is
24 being charged with can be found in Counts One, Two, and Three.

25 And the motive: The defendant's motive was to

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Summation - Gentile

1 maintain or increase his position in the gang. That's what the
2 government has to prove beyond a reasonable doubt. The
3 defendant's motive here is to sell drugs in connection with his
4 activities. In fact, the only reason the defendant is able to
5 control his territory and continue to sell crack is through the
6 protection that his gang provides. DeJesus, as a member of
7 that gang, knew it was expected of him to shoot Toribio because
8 his superior in the gang ordered him to do it.

9 With respect to Counts One and Three, please listen
10 carefully to Judge Oetken's instructions on aiding and
11 abetting, because even if the defendant did not have the motive
12 to kill Toribio to keep or maintain his position in the gang,
13 it is enough if Juan DeJesus followed the defendant's orders to
14 maintain his position in the gang. And evidence of this is
15 found in DeJesus' statement to Edwards, that he had work to do
16 for the big homie.

17 Count Four is the firearms possession. The defendant
18 is charged with aiding and abetting DeJesus' possession of a
19 firearm. There are three elements to this charge: That the
20 defendant willfully caused or aided and abetted someone else's
21 use, carrying, or possession of the firearm. Here, the
22 defendant knew that DeJesus was carrying a firearm because he
23 was the one who ordered him to do the shooting, he was the one
24 who ordered him into the deli, and he was the one who
25 accompanied him when he fired those shots.

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1 The second element is that the defendant willfully
2 caused or aided and abetted someone else's use or carrying of a
3 firearm during and in relation to one of the crimes of violence
4 charged in Count One or Count Three. Likewise, the defendant
5 was the one who ordered DeJesus to shoot Isaac Toribio on
6 October 20, 2017, and worked with DeJesus to obtain the firearm
7 for that purpose.

8 The third element is that Mathews acted knowingly.
9 And, clearly, the defendant acted knowingly because he planned
10 the shooting and ordered his fellow gang member, DeJesus, to
11 participate in it.

12 Count Five is an ammunition offense. There are three
13 elements to this charge:

14 One, that Mathews was convicted of a crime punishable
15 by a term of imprisonment of more than one year. Here, the
16 parties stipulated to the fact that he was convicted of a crime
17 punishable by a term of imprisonment of more than one year.

18 The second element is aiding and abetting, that the
19 defendant knowingly possessed ammunition, or willfully caused
20 another person to knowingly possess ammunition, or aided and
21 abetted another person -- person's knowing possession of
22 ammunition. It is sufficient that the government proves beyond
23 a reasonable doubt that Mathews aided and abetted the
24 commission of these offenses or that the defendant willfully
25 caused someone else to commit the offense. But, again, please

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Summation - Gentile

1 listen carefully to Judge Oetken's instructions in this regard.

2 Finally, interstate commerce. As previously stated,
3 you heard testimony about where the five shell casings that
4 were recovered at the scene of the shooting were manufactured.
5 They were not manufactured in New York State.

6 And the last count is the narcotics distribution
7 charge. There are three elements to this charge:

8 That the defendant distributed or possessed with the
9 intent to distribute crack cocaine. Again, there is little
10 dispute that the defendant is a crack dealer. You saw him on
11 video, and he was arrested again for that conduct in January of
12 2018 by Detective Cole.

13 The second element is that he was a knowing
14 participant. Likewise, there is no dispute that the defendant
15 was a knowing participant in the activities he organized and
16 supervised.

17 And the third is that the substance was, in fact,
18 crack cocaine. You heard testimony from two criminalists from
19 the New York City Police Department laboratory, who testified
20 as to the presence of crack cocaine in the items seized from
21 the defendant. The only real dispute here is the amount of
22 drugs. Mr. Kaye has emphasized throughout the trial that
23 Mathews was a small-time dealer. That's because Mathews is
24 charged with distributing 28 grams or more of crack cocaine.

25 However, in the year leading up to the shooting,

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Summation - Gentile

1 Keisha Hood told you she purchased \$50 of crack cocaine from
2 the defendant every day. The cumulative amount of the
3 defendant's crack sales to Keisha Hood alone are more than
4 enough to meet the threshold of 28 grams. She testified that
5 she purchased \$50, or five bags of crack, from Mathews every
6 day for a year. That would mean the defendant sold over 1800
7 bags of crack cocaine to Keisha Hood alone. If each of these
8 bags weighed approximately 0.082 grams, as calculated by the
9 two police criminalists in their analyses of drugs recovered
10 from the defendant's apartment and the drugs recovered from a
11 sale the defendant made on December 12th, 2017, that means the
12 defendant sold more than 145 grams of crack cocaine to Keisha
13 Hood alone during that year.

14 Even if you reduce that amount by three-quarters, it
15 would still amount to more than 35 grams, well beyond the
16 statutory threshold of 28 grams.

17 Ladies and gentlemen, when we first addressed you here
18 last week, we asked you to do three things: To listen to Judge
19 Oetken's instructions, pay close attention to the evidence, and
20 to use your common sense. I'm going to ask you to do those
21 same three things as you listen to the rest of the closing
22 arguments and then as you go back to deliberate. If you do
23 those three things, you'll reach the only verdict consistent
24 with the evidence, with the law, and your common sense, and
25 that's that Leonard Mathews is guilty as charged.

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Summation - Mr. Kaye

1 Thank you.

2 THE COURT: Thank you, Mr. Gentile.

3 Ladies and gentlemen, counsel for the defendant,
4 Mr. Kaye, will now have an opportunity to address you. Let me
5 first ask if anybody needs a quick bathroom break?

6 Yes? I think a couple of them do. Why don't we take
7 a five- to ten-minute bathroom break. Please leave your pads
8 on your chairs, and then we'll have closing argument of defense
9 counsel.

10 (Jury not present)

11 THE COURT: We will recess for ten minutes.

12 (Recess)

13 THE COURT: All set?

14 MR. KAYE: Yes.

15 THE COURT: Okay.

16 (Jury present)

17 THE COURT: Members of the jury, we will now hear the
18 closing argument on behalf of the defendant.

19 Mr. Kaye.

20 MR. KAYE: Thank you, your Honor.

21 Good morning, ladies and gentlemen.

22 JURY MEMBERS: Good morning.

23 MR. KAYE: Ladies and gentlemen, your verdict, of
24 course, will be meaningful to Leonard Mathews, but your verdict
25 will also stand the test of time here. It will have meaning to

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Summation - Mr. Kaye

1 the community principally because your verdict will last
2 forever. This verdict will be on the book, so to speak, for
3 eternity, and I know that you want to get it right. And I know
4 that you will.

5 Each of you individually are a force to be reckoned
6 with. You have power, you have influence, individually and as
7 a whole, you are the gatekeepers, you stand between the mighty
8 power of the federal government and one of its citizens. You
9 each have been chosen to serve because you are men and women of
10 sound judgment and fairness. You have each taken an oath, as
11 jurors, to deliberate fairly and honorably in judgment of a
12 fellow citizen, and I know that you will do that.

13 In a very real sense, any defendant on trial relies
14 upon his jury for the protection of his life, his liberty, and
15 his happiness. And I remind you that if any one of you has a
16 reasonable doubt as to the defendant's guilt on any of these
17 charges, it is your duty to vote not guilty.

18 The verdict sheet speaks for itself. It speaks about
19 the presumption of innocence. When you receive the verdict
20 sheet, you will see lines. The first line on the verdict sheet
21 is "Not guilty." The line to the right is "Guilty." It's like
22 that for a reason -- the defendant is presumed innocent, he is
23 cloaked with innocence. Not until you are convinced,
24 individually, beyond a reasonable doubt that the government has
25 met its burden, has held up its part of the bargain, does that

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Summation - Mr. Kaye

1 cloak of innocence fade away. And that is why the verdict
2 sheet will begin with the words "Not guilty."

3 It is not my role -- it is not the defendant's role --
4 to prove innocence. It is the government's role to establish
5 guilt beyond a reasonable doubt. The point I am trying to make
6 is that jury deliberation is what this is all about, not jury
7 capitulation. You are not to simply give in because we have
8 all spent hours and hours of our lives here day, after day,
9 after day. Each of you, separately and individually, are
10 entitled to your own vote.

11 And I ask you to stand your ground. If you have a
12 reasonable doubt, listen to your jurors, deliberate with your
13 fellow jurors, by all means, but if you have done so, and you
14 still harbor a reasonable doubt, even one juror, that juror is
15 entitled to his or her own verdict. I am not encouraging a
16 modern-day 12 angry men and women; I am just emphasizing what
17 you already know.

18 Now, the evidence has shown that Leonard Mathews is
19 indeed a small-time, street-level petty drug dealer. He sells
20 tiny pinky nail size bags of crack cocaine to poor people in a
21 poor neighborhood, a neighborhood that he grew up in, a
22 neighborhood that he went to school in. He lives in a sparsely
23 furnished room in his mother's apartment. We know he has no
24 car. We know he has no expensive watch or jewelry. We know he
25 has no clothing to speak of. A few hundred dollars of cash was

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Summation - Mr. Kaye

1 on hand in his room when Detective Cole executed the search
2 warrant. Whether he sold as much as 28 grams over the time
3 period alleged in the indictment, I leave that in your capable
4 hands. If you are convinced beyond a reasonable doubt that the
5 government's math adds up, you would be well within your role
6 as jurors to conclude that the sixth charge of the indictment
7 has been proven, and, frankly, I expect you will convict him of
8 the sixth count in the indictment.

9 Please don't get me wrong. I am not encouraging crack
10 dealing. I am not suggesting that crack dealing is not a
11 serious federal offense; it is, and there are serious
12 consequences. But Leonard Mathews is innocent of the first
13 five charges in the indictment. He is not guilty of the first
14 five charges in the indictment. He did not do this. Someone
15 else did this. Other people committed those crimes. I think
16 you know that.

17 He did not order Juan DeJesus to commit the crimes
18 that he and Ciara Edwards committed. Nor did he aid and abet
19 Juan DeJesus in committing the crimes that Juan DeJesus himself
20 committed.

21 I told you in my opening statement that you would hear
22 about a modern-day Bonnie and Clyde, and I believe I have
23 delivered. She and he, Ciara and Juan, were indeed a match
24 made in hell. DeJesus with his RAP sheet as long as my arm --
25 robberies, assault, arson, attempted murder -- it's Juan

IA1KMAT2

Summation - Mr. Kaye

1 DeJesus that should be sitting here at this table. It is Ciara
2 Edwards that should be sitting next to him at this table.
3 Because this crime was committed by them. This was not
4 committed by Leonard Mathews. It is not sufficient to conclude
5 that Leonard is guilty because he is the common denominator.
6 You must have proof beyond a reasonable doubt, which does not
7 fill this courtroom.

8 Human interaction in the form of videos, and clips,
9 and minutes and seconds does not add up like a math equation.
10 Human interaction is complex. And I think you all know that.

11 I would like to talk to you about these five charges
12 and give you my impression of what we believe the evidence has
13 shown.

14 The first observation that I hope you make is that the
15 government itself doesn't really even know what happened here.
16 How could they know what happened here? After all, they are
17 relying upon these silent movies that we have seen, narrated by
18 Ms. Edwards, a extremely disturbed young woman. This silent
19 movie is costarred by two distraught and dysfunctional
20 individuals. The government, I submit, to you is literally
21 talking to you out of both sides of its mouth.

22 I have an analogy I'd like to speak to you about. I'd
23 like you to assume, for the purposes of this analogy, that the
24 government has packed your lunch. They have fed you two
25 dishes. The first dish: Leonard Mathews ordered a hit on Ike

IA1KMAT2

Summation - Mr. Kaye

1 to maintain his position in the Bloods. You don't like the way
2 that dish tastes? Okay. Spit that out and try this other
3 dish. Second dish: Leonard didn't order a hit on Ike, it was
4 Juan DeJesus' idea, but Leonard aided and Leonard abetted Juan
5 DeJesus. Two separate theories are being submitted to you.
6 Two separate theories are being argued to you by the
7 government: A willfulness theory and an aiding and abetting
8 theory.

9 What I'm suggesting to you is that should tell you
10 that they don't know. That, ladies and gentlemen, is the
11 essence of reasonable doubt. The government doesn't know; they
12 want you to figure it out. I asked Detective Cole on
13 cross-examination: Detective Cole, does fight two play a role
14 in the motive for the shootings? Fight two being the
15 Leonard-Ike scuffle.

16 At the transcript, page 365, if you want to ask for
17 it, he says: Yes, it does. Fight two does play a motive in
18 the shooting.

19 I asked Detective Cole whether fight one with the
20 Mexicans is connected to fight two, and he said he did not
21 know.

22 Well, Ciara Edwards was shown a video of fight one.
23 That's also in the transcript at page 574.

24 Why haven't you been shown the video by the government
25 of fight one? These fights are interrelated. You have to

IA1KMAT2

Summation - Mr. Kaye

1 determine motive. How do you determine motive beyond a
2 reasonable doubt without seeing the video of fight one, when
3 it's related to fight two?

4 You may want to infer that that is because Leonard is
5 a peacemaker in fight one. At the transcript page 574, that's
6 what Ciara Edwards told us: During fight one, between these
7 two Mexican individuals and Leonard, Leonard -- I'm sorry, and
8 DeJesus, Leonard broke it up, Leonard acted as a peacemaker.
9 These fights are related, and these fights are the motive for
10 the shootings somehow, and no witness called by the government
11 has reliably told us what was said.

12 It's not so much what we see, it's what is said. You
13 know, in your daily lives, if someone says something to you,
14 that can set you off. Then all we would see is you or me or
15 anyone going off. It's what is said that triggers the fight
16 that's of critical importance. That's motive.

17 We see what happened on fight two, but we don't know
18 what was said. Whatever it was, I submit to you, will hold the
19 key to the motive for this ugly incident.

20 In case you don't recall what Ciara Edwards testified
21 to about fight two, what words she heard, I will remind you.

22 At the transcript, page 583, I asked her:

23 "Q. Did you tell Detective Cole on January 8th, 2018, I really
24 don't remember, in all honesty, what Leonard and Toribio were
25 arguing over? Did you tell them that?"

IA1KMAT2

Summation - Mr. Kaye

1 She answered: "Yes, I do remember that."

2 She does not remember, in all honesty, what these two
3 were arguing over. That is the end of the analysis. She does
4 not know; she does not remember.

5 Now, none of us can rely on the government's motive,
6 that he was disrespected and acted out of a sense of revenge.
7 She was standing right there, can't deny that, we see that on
8 video, but she doesn't know what was said or she doesn't
9 remember what was said. If you remember nothing else from my
10 summation, please remember that.

11 The first five charges are violent crimes and firearms
12 offenses in furtherance of racketeering. In order to convict,
13 you must find beyond a reasonable doubt, among other things,
14 that the shooting was a racketeering activity and done in order
15 to maintain or increase Leonard's position in the Bloods gang.

16 But I ask you: How can you exclude the possibility
17 that this was a purely personal shooting, personal between two
18 friends, having nothing to do with gangs, nothing to do with
19 racketeering activity? When no one called by the government
20 knows what either fight was about, how do we exclude that? I
21 submit, you cannot.

22 I mean, really, gangs are, for the most part, a bad
23 thing -- no one should doubt that -- but these people are
24 individuals too. They are human beings. They have lives, and
25 they have loves, and they have happiness, and they have

IA1KMAT2

Summation - Mr. Kaye

1 conflict, just like each of you. Not every conflict they will
2 become embroiled in is a gang-related conflict, and the
3 government has not proven beyond a reasonable doubt what the
4 fight was about. Ciara, in all honesty, she said did not know.

5 You may conclude, at the end of this case, that
6 Leonard Mathews did every single thing the government says he
7 did and that the video does involve, but that this was a purely
8 personal conflict, and if you find that, you must acquit. That
9 is not a racketeering act; that is a personal act.

10 The subject of this fight has an unlimited number of
11 interpretations. Last night, I Googled, what are the top five
12 pointless things people fight about? Politics, no surprise;
13 religion; sports; race; and relationships. But you all know
14 that it's endless. We argue, and fight, and debate, and
15 bicker, and flip out over an endless myriad of topics. The
16 problem with this is that we are in federal district court, we
17 are in the Southern District of New York, and you're being
18 asked to conclude that this fight was a gang-related fight,
19 that this fight motivated a racketeering activity. And the
20 proof on that critical subject is not here beyond a reasonable
21 doubt.

22 Your verdict is not intended to make anyone happy.
23 Please don't be concerned about making either side happy or
24 sad. That's got nothing to do with it. It's not about doing
25 anything but the right thing. You took an oath, as jurors, to

IA1KMAT2

Summation - Mr. Kaye

1 deliberate fairly. You are not going to solve crime in this
2 city or in Bronx County by reaching a verdict of guilty on less
3 than proof beyond a reasonable doubt. That is not justice.

4 We've heard the detective, the gang expert, testify to
5 you. He was terrific. Even though this was the first time he
6 had ever been qualified as a gang expert, he was a very
7 knowledgeable gentleman. What he told you, though, was that it
8 depends on the subjective belief of the person.

9 Do you remember I said to him: Oh, I want to give you
10 scenario one and scenario two. Scenario one, I'm on the train,
11 I'm going to the Barclays Center to see Drake, I'm with my
12 grandmother, and there's a gang member on the train, and I
13 accidentally step on his toe, and he just beats the daylights
14 out of me. Is that a gang offense? I think he said that was
15 gang motivated, right? If he was doing that in front of his
16 other garage members, then that could have been gang motivated
17 to show he's tough, nobody can step on his toe. But at the end
18 of the day, it's subjective, it's in the person's mind. What
19 are they thinking? What was DeJesus thinking? What was
20 Leonard thinking? Has the evidence filled that void? Do we
21 know what people are thinking? We don't know what they're
22 thinking. The government didn't call the right witnesses to
23 fill that gap.

24 The bottom line is I submit to you what the government
25 has done is they have thrown two very different theories at you

IA1KMAT2

Summation - Mr. Kaye

1 like a bowl of spaghetti, hoping that it's going to stick upon
2 each of you.

3 I believe also in my opening statement, I told you
4 that Detective Cole was a smooth talker. And, again, I believe
5 I delivered on that promise. How many times during my
6 cross-examination of the detective did he say, "I don't
7 remember, I don't know"? I don't know, I don't know, I don't
8 know, I don't remember. He could not remember even what he was
9 looking at in one of these black looseleafs that sat in front
10 of him for a week. I hope you remember that line of the
11 examination.

12 Detective Cole wouldn't or couldn't even admit to me,
13 and you, that looking at one of his own writings, something he
14 jotted down, would refresh his recollection of what one of the
15 witnesses said to him. Think about that for a second. You
16 take notes of a conversation you had with a friend. Someone
17 asks you, well, what did the friend say to you? I don't -- I
18 don't remember, you say I don't remember. Well, would looking
19 at the notes that you took of the conversation refresh your
20 recollection? Of course it would. It would every day of the
21 week, it would every month of the year, but not to the NYPD
22 Detective Elvis Cole. Think about that when you start thinking
23 about the credibility of the witnesses that the government has
24 put before you.

25 I submit to you, that was dishonesty. The Court will

IA1KMAT2

Summation - Mr. Kaye

1 tell you in its instructions, if you feel that a witness has
2 lied about one thing, you're well within your rights to believe
3 the rest of that witness' testimony or discount that testimony
4 entirely.

5 Detective Cole also repeatedly dodged questions. Do
6 you remember all those questions I posed to him about Facebook?
7 Who posted it? All he had to say was simply: I don't know.
8 The Facebook seemed to be the account of someone named Bigz
9 Milla. My point was unless we're there in the room when Bigz
10 Milla is putting up, uploading, the photograph, we don't know
11 that Bigz Milla is the person that did it. It could have been
12 his father, it could have been his brother, it could have been
13 his son. The point is a simple point: The detective could not
14 bring himself to be honest on that point and just say, I don't
15 know, counselor. And I would have moved on. Instead, we spent
16 ten or fifteen pages of the transcript just battling back and
17 forth on a silly point. But it's turned into something
18 significant.

19 Think about the police witnesses. If the police
20 witnesses are willing to be such a member of Team USA, can you
21 only imagine the pressure on the civilians, the nonpolice
22 witnesses, to do what's expected of them, to say what's
23 expected of them.

24 Do you remember the first witness in this case,
25 Detective Steven Reyes? He sat there, he put into evidence the

IA1KMAT2

Summation - Mr. Kaye

1 shooting video where you see the flash coming out of the gun
2 that Juan DeJesus is firing. I said to him: Is that the
3 defendant firing the gun? We all know now that was not the
4 defendant firing the gun; that was DeJesus firing the gun. But
5 what did Detective Steven Reyes say? He said haltingly, I
6 would say yes. What is the mindset of a police detective that
7 would, without any basis, say what he thinks the right thing to
8 say was for the government? He was wrong, he was dishonest. I
9 think it's just outrageous.

10 So when you start to examine this case that they
11 brought you under a microscope, as you must, as jurors,
12 remember these things. This is not a personal win and loss.
13 We are in a criminal matter of great importance and
14 significance to Mr. Mathews. You can't just say, yeah, I think
15 it is, it's him, it's him.

16 Now, I also asked Detective Cole if he interviewed
17 Toribio, and he said he did. You see how the government
18 dragged Deeanna Seabrooks and Keisha Hood in here, subpoenaing
19 them, literally dragging these women in here and giving them
20 both nonprosecution agreements? These are two of the most
21 vulnerable women you have ever seen. They are drug taking,
22 they are irritable, they are restless addicts, and above all,
23 they are unreliable. Detective Cole managed to bring these two
24 in here, didn't he? And ask yourselves: Did the government
25 play all of the videos they have collected, or did they just

IA1KMAT2

Summation - Mr. Kaye

1 play snippets of videos here and snippets of videos there, in
2 their 20th Century Fox presentation to you, the ones that they
3 believed benefit their prosecution?

4 They didn't even look for video on Creston Avenue.
5 Creston Avenue is the street where you see Ciara and DeJesus
6 make a left turn out of the bodega, walk up the street past the
7 ice machine on their left, they continue up the street. Then
8 you see Leonard cross the street and walk with them. Where
9 does Leonard go after that? Where is the video of what Leonard
10 Mathews does after that? That's a critical video. Does he
11 walk with them all the way up the block? Does he go all the
12 way with them to 196th Street? Is he present when DeJesus
13 takes the gun out of Ciara's back? Is he present when Ciara
14 and DeJesus now start walking west on 196th Street? Is he
15 present when they reach the corner of Morris Avenue and 196th
16 Street? Is he there when they make a left turn, where the
17 shooting event actually takes place? There's buildings all
18 around. There's buildings from East Kingsbridge Road all the
19 way up to 196th Street. Where is that video? Ask yourselves
20 that when you're determining whether or not the government has
21 satisfied you with proof beyond a reasonable doubt or whether
22 or not the government has essentially treated you not as
23 jurors, but as moviegoers, moviegoers that are fed a script,
24 and showed certain videos, and asked to arrive at certain
25 conclusions.

IA1KMAT2

Summation - Mr. Kaye

1 Again, I make this food analogy. Food is my favorite
2 thing; it may be most of yours. They are the chefs in a
3 kitchen, and this is their meal plan, and it's true that they
4 can bring you whatever they want to serve you. You are their
5 customers, but don't swallow it. If you don't like the way it
6 tastes, that means you have a reasonable doubt.

7 I want to talk a little bit about Deeanna, also known
8 as Chicago, but I'm not going to belabor this point, because is
9 there really much sense in highlighting her testimony? Sixteen
10 criminal convictions. Sadly, she is homeless, and we have all
11 seen the homeless far too often in our city and their emotional
12 problems. Chicago has a 40-year history of drug use and
13 40-year history of drug-dealing, including prostitution. She
14 told us if she's inside, she's high; if she's outside, she's
15 looking to get high. She was high the day before she
16 testified, and she was probably high when she testified.

17 It's sad. And this is, again, a matter of great
18 importance to the defendant. The government has to bring you
19 witnesses to build a solid foundation. They need to bring you
20 witnesses that form a foundation made of concrete and of rebar.
21 But I submit to you, when you analyze the testimony of a
22 witness like Chicago, they are akin to a house of cards.

23 The government brings you these most vulnerable
24 witnesses, with 40 years' worth of cocaine use, and I submit to
25 you, gets them to say whatever they want them to say on the

IA1KMAT2

Summation - Mr. Kaye

1 penalty of federal perjury charges. Both Keisha and Chicago
2 have nonprosecution agreements. Do you know what the
3 prosecution agreements -- the nonprosecution agreements say?
4 The government didn't put them into evidence. You don't even
5 know the terms of them. You don't know the sentences, and the
6 commas, and the periods. That was kept from you. You were
7 given all the video, but none of the prosecution's
8 nonprosecution agreements with these witnesses.

9 All we know is they won't be prosecuted for their
10 lifetime of crimes, for coming in here and testifying to what
11 the government wants them to testify to. We all observed the
12 demeanor of Keisha Hood. What a shame. She literally said she
13 could not remember her own name. Did she not say that? I
14 believe she did. Unfortunately, she also referred to herself
15 as retarded, which is personally a word that I despise.

16 She does not even know the name of the store she said
17 she works in. She told us she stopped working there because
18 her boss went on vacation. I do give the government credit for
19 one thing in regard to Keisha: They stated, on direct
20 examination of Keisha, in the form of a question: Keisha, in
21 sum and substance, you weren't entirely truthful with us, were
22 you, at the beginning? And she said no. What an
23 understatement. But given everything we know about her, I just
24 could not put her through a vigorous cross-examination. I
25 basically let her go out of here. And you saw her off the

IA1KMAT2

Summation - Mr. Kaye

1 stand: God bless you, God bless you, God bless you. I want to
2 get out of here; let me out of here. That's a house of cards
3 witness. That is not a house of mortar, rebar, and concrete
4 witness.

5 I will say another thing about the substance of her
6 testimony: If you find that the records show that Keisha
7 called Leonard first, you may want to infer that that was a
8 call to buy crack. Secondly, Keisha did testify that that was
9 not her phone. And, thirdly, and very significantly, the
10 government did not introduce to you any technical information,
11 any subscriber information, for Keisha's phone. We heard that
12 the phone has the last four numbers, 1414, because it was
13 subpoenaed. Was that Keisha's phone? Or was that Chicago's
14 phone? Because Chicago sure didn't testify that Leonard said
15 he had somebody do it. That was Keisha that said that. But
16 there's also testimony they used phones. One had a phone, one
17 didn't have a phone. There was also testimony that they're not
18 friends.

19 Finally, apparently, there was a recording of this
20 critical conversation that we haven't heard, another piece of
21 evidence we didn't hear from the government. I asked Keisha:
22 Was the conversation you allegedly had with my client taped?
23 She said it was.

24 I will also say this to you: If Leonard was indeed
25 sending a message to Chicago that he's sorry, assuming you want

IA1KMAT2

Summation - Mr. Kaye

1 to credit her testimony, ask yourselves: Is that the demeanor
2 of a ruthless Bloods gang leader that orders a hit?

3 (Continued on next page)

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IA1AAMAT3

Closing Statement - Kaye

1 MR. KAYE: Tell her I'm sorry. I mean really, he
2 supposedly orders a hit at ten or 11 o'clock and then
3 apologizes to someone a few hours later? He sees fight one
4 happening and he's portrayed as a peacemaker. He records a
5 video of a couple of kids beating up another couple of kids and
6 maybe it was a gang thing. I don't know. Maybe it wasn't a
7 gang thing but I can tell you what I saw. And I saw Leonard
8 being protective of whomever it was being up. This just
9 doesn't seem like the demeanor of somebody who is going to try
10 to increase the status by ordering a hit of somebody that he
11 had a scuffle with, somebody that he had a lifelong
12 relationship with, somebody who was not his rival over
13 something that no one knows.

14 Come on. I think Mr. Gentile described the scuffle as
15 a "street brawl". Did that look like a street brawl to you?
16 He said that Leonard was humiliated. He said that Leonard was
17 embarrassed. Humiliated and embarrassed, I think that's quite
18 a bit of an overstatement. That was nothing. That was not
19 even a fight. No one was injured. No one even had a scratch
20 on them. Leonard's shirt wasn't even ripped or torn because
21 you see he puts his shirt back on. They were basically just
22 holding onto each other. Nobody was even throwing punches at
23 one another. There is maybe one punch thrown to start the
24 fracas. No one, I submit to you, goes to war over that with a
25 lifelong acquaintance who is not a rival.

IA1AAMAT3

Closing Statement - Kaye

1 Leonard sells crack. Ike sells weed. They're not in
2 competition. Remember, you have to find this a racketeering
3 activity. You have to find motive and intent to kill for gang
4 business, somebody who's not a drug dealer and rival to you,
5 somebody that you've known forever, something we don't know.
6 That's the essence of reasonable doubt in this case.

7 The defense put in only two pieces of evidence. The
8 first one was the photograph of Ciara and I asked her, are you
9 smiling? After you participated in the attempted murder of an
10 individual, is that you smiling? And she said, no, I can see I
11 am biting my lip. And I said something to her like, well, you
12 certainly aren't frowning, are you? And I don't recall what
13 she said. That's not the point. You can take the photograph
14 into evidence with you. It's here. Look at it in the light.
15 Get a microscope if you need it. I will tell you it certainly
16 looks to me like this young lady is very pleased with herself.
17 Is that the same person we saw on the witness stand? I submit
18 to you, it was not.

19 The other defense exhibit was a still photo from the
20 Ike/Leonard scuffle. And I show this to you only because it
21 starts with Ike's left hand on Leonard's right shoulder. This
22 is how who people that are friends talk to each other about
23 something in conflict. You don't know what they said but just
24 look at the body language here. These people know each other.
25 This is not a gang hit. If anything, this is a personal beef

IA1AAMAT3

Closing Statement - Kaye

1 between these two guys. They even separate. They separate
2 without fighting and then Toribio walks almost into the
3 crosswalk lines and he says something. Again, we don't know
4 but he says something to Leonard and then Leonard comes in and
5 then they start getting into it. We need to know what that
6 was. And Ciara said, in all honesty, I don't know what it was.
7 Forget about all the other things she said. Oh, they were
8 talking about a set. They were talking about a soldier. How
9 do you reconcile on direct-examination, Ciara saying the fight
10 was about the word "set", was about the word "soldier". You
11 can't have your soldier do things? How do you reconcile that
12 with her telling you that, in all honesty I don't know what the
13 fight was about. I don't think you can, not in a criminal
14 case, not where the defendant is presumed innocent until/unless
15 the government removes that cloak of innocence. This is
16 important. Again, I think that shows affection. The fight
17 video was Government Exhibit 201-1. Feel free to request and
18 watch it. Arrive at your own conclusion. It lasts about one
19 minute. To us it doesn't make much sense that a one-minute
20 scuffle is going to get a nonrival childhood friend killed.

21 So, when Keisha tells you that he said he had someone
22 do the shooting, I think that just makes no sense. Leonard is
23 a dealer in that spot. Is he really going to kill someone or
24 have someone killed and then expect to return there selling
25 dime bags the next day or the next week? Does that make sense?

IA1AAMAT3

Closing Statement - Kaye

1 That's just not good for business over a one-minute scuffle. I
2 mean as a city, as New Yorkers are we so afraid of the gang
3 word, of The Bloods connotation that we think these men and
4 women are all killers? I know that they're not. Not every
5 petty slight, not every harsh word or scuffle is going to serve
6 as the motivation of a shooting even if you believe they are
7 all Bloods gang members, even if you believe they are all Milla
8 Bloods people.

9 Let's not forget who this evidence that Leonard set it
10 up is coming from by the way, a witness with zero credibility
11 saying what the government wants her to say. Think long, think
12 hard before you credit the testimony of these witnesses, ladies
13 and gentlemen. I ask you this and I'm not trying to be smart.
14 Ask yourselves, would you let Keisha Hood hold your cellphone
15 overnight? Let that sink in for a second. Keisha is someone
16 that came rambling off the stand. Our cellphones are our
17 lifeline. I don't think any one of you to be honest, to be
18 perfectly honest, would entrust that woman with your cellphone
19 and that is a reasonable doubt as to her testimony. We could
20 go on for days here with examples.

21 What about Deeana Chicago? Would you let her walk
22 your favor pet? Would you let her housesit for you? Do you
23 trust that woman with your phone, with your pet, with your
24 home, with your belongings? It's a rhetorical question. The
25 answer is "absolutely not". Well, if you can trust her with

IA1AAMAT3

Closing Statement - Kaye

1 personal property why in the world can you attach credibility
2 to her in an -- setting such as this and preclude that she's
3 provided you proof beyond a reasonable doubt? That makes no
4 sense.

5 If your answer is to yourselves quietly in your head,
6 I wouldn't do it. I submit to you they have no credibility and
7 you have no business attaching credibility to them.

8 I will say one thing that is entirely consistent
9 however between the testimony of Chicago and Keisha. Neither
10 one of them ever referred to Leonard as "big homie". If
11 Leonard Mathews was a gang leader or big homie, he would likely
12 have the gang tattoos that Detective Jeselson talked to us
13 about, the paw. There's a stipulation in evidence that was
14 read to you. Leonard Mathews has no gang tattoos.

15 There would also likely be more than one witness
16 referring to him as "big homie". The only witness that refers
17 to him as "big homie" is Ciara. Remember, we're talking about
18 the credibility of police officers, how they handled themselves
19 on cross-examination. Detective Reyes flatout lying that it's
20 the defendant shooting. Is it beyond the realm of possibility
21 that one of the police officers in this case fed Ciara the name
22 "big homie". Just say he is big homie, big homie, big homie
23 over and over and over again. Nobody else refers to him as
24 "big homie".

25 Is it in his contacts? Did they show you any of these

IA1AAMAT3

Closing Statement - Kaye

1 other contacts where somebody else in the gang calls him big
2 homie? Did anybody else call him big homie? No. The
3 government shows you a video of him drunk at a party in what
4 looks like his own apartment pouring alcohol into the mouth of
5 a young girl saying "GMB. Big homie on the set." He is the
6 big homie in his apartment. That is not evidence that he is
7 big homie of a set.

8 Let's also not forget Jeselson's other testimony.
9 "Big homie" could mean somebody who's got a lot of time in the
10 gang. It doesn't always mean the leader. And that's from the
11 20 plus year police detective gang expert believes she wasn't
12 trying to help the defense.

13 So I submit to you that apply to the facts of this
14 case, you would well within your rights to conclude that in
15 this case as applied to Leonard "big homie" means he's got a
16 lot of time in, not necessarily a leader. But I would like to
17 discuss the gang connection and why I submit to you there's
18 insufficient proof that Leonard is a leader and that Leonard
19 did order this hit.

20 First of all, labels don't matter. Do they? I mean,
21 you can call someone a leader and they can be a follower. You
22 can call someone a follower and they can be leader. You can be
23 a rookie quarterback and they put you in. You can be a
24 seasoned quarterback and they you sit on the bench. It's what
25 you do. It's not so much your moniker.

IA1AAMAT3

Closing Statement - Kaye

1 Here's the facts. Let's apply that to "big homie".
2 What did he do to earn that moniker "big homie"? He looks like
3 he is in his late 20s, early 30s. We don't know what he did to
4 become The Big Homie. He lives with his mommy. The police
5 execute a no-knock warrant at six o'clock in the morning and
6 what do they recover? Six or seven fingernail-sized zip-locks
7 of crack cocaine, a small scale, more empty zip-locks, allergy
8 pills, muscle relaxers, no weapons, no gang paraphernalia, no
9 gang paperwork. There is no objective evidence here of status,
10 wealth or power. He hangs out with a bunch of other guys. Can
11 you tell status? Can you tell power from a gesture?

12 Could it be that Juan DeJesus is the leader of this
13 gang? Doesn't that make more sense? Juan DeJesus being the
14 big homie in which case it means the leader. Let that sink in
15 for a second.

16 He is a vicious maniac. We know that. He just got
17 out of prison. He recruits, literally, recruits this very
18 troubled Ciara Edwards. He gives her a G-check. He pimps her
19 out. He charges her rent to stay at his mother's apartment.
20 He takes on these two Mexican individuals by himself and slaps
21 the mess out of them. During the scuffle there's a big guy in
22 red. I think he's got a baseball cap on. If Leonard was the
23 leader big homie of this fight and not somebody engaged in a
24 personal fight with a friend, wouldn't you expect that big
25 dude, that guy in red to step in and inflict damage on the

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Closing Statement - Kaye

1 person that is fighting his big homo? That guy in red, that
2 very substantial man just basically stands there. He waits.
3 He watches. He let's them fight and then eventually when he
4 steps in he is just kind of like, make sure that nobody gets
5 hurt. That just does not have the flavor of somebody that is
6 protecting a gang leader. I don't think it's likely that if
7 he's the big homie leader type that this guy's just going to
8 stand by and let somebody put their hands on the leader like
9 that unless, of course, he's fighting with somebody he knows
10 over something that's not gang business. And that's what I
11 submit to you is going on here.

12 When DeJesus allegedly tells Ciara, says he has to put
13 in work for The Big Homie or we have to put in work for the Big
14 Homie, how do we know that that's what DeJesus actually said to
15 her? We have to credit Ciara for that. But let's take it a
16 step back. How do we know that that's what Leonard told Juan
17 DeJesus? Do you see all these layers that you have to accept
18 that Leonard told Juan DeJesus? You have to put in work for
19 me, whatever that means. Juan DeJesus then said to Ciara he
20 said, we have to put in work for The Big Homie.

21 I mean, this is like an adult version of the telephone
22 game. Who knows what gets lost. Who knows if that even
23 happened. Where is the proof beyond a reasonable doubt? Are
24 you telling me you don't have a doubt, that you can give a
25 reason for not crediting the story of Ciara, that with all her

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Closing Statement - Kaye

1 problems she was told something and she relays it accurately,
2 she didn't hear what, if anything, Leonard said of she is
3 hearing it secondhand. This is the house of cards that I keep
4 referring to.

5 Now, aside from all of us having to accept the word of
6 Ciara it is, if you look at the videos it is Juan DeJesus that
7 gestures to Ciara to follow someone to go get the gun he kind
8 of like says go, go, go get the gun. But it's not Leonard.
9 Leonard doesn't tell her to go get a gun. Leonard never
10 touches a gun. She tells you that. And of course we discussed
11 this already when they exits the bodega to go do this shooting.
12 Leonard is across the street. What role does Leonard actually
13 play in when the decision is made to go? He is across the
14 street. He is not in the bodega. In the bodega is DeJesus and
15 Ciara. So this big homie leader doesn't tell them to go do
16 anything. He gets called over by DeJesus. I just realized
17 that looks like he gets called over by DeJesus which is another
18 piece of evidence for you to consider as to whether or not it's
19 DeJesus that's the leader. Yet the government has just piled
20 on all of this circumstantial evidence because they want you to
21 conclude that's Leonard. That's the monster. Really, it's
22 DeJesus, far more evidence that's DeJesus than Leonard. We
23 know that DeJesus has a horrendous criminal record. And you
24 have already learned that Leonard has one felony drug sale
25 conviction.

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Closing Statement - Kaye

1 Just two final words on this issue of who is the
2 actual leader.

3 First word, the texts between DeJesus and Leonard
4 afterwards. DeJesus says essentially, yo, don't tell nobody
5 about what happened, not even Cindy. So does that soldier tell
6 a leader what to do? This is DeJesus telling Leonard what to
7 do or what not to do. Does that make sense? I know I am
8 sounding a little repetitive but let that sink in.

9 Second, Leonard lies to Detective Maye. We know he
10 lies to the detective. He says I don't even know that guy. So
11 you may properly infer that he is protecting his leader even at
12 great risk to himself lying to the detective, 26 years on the
13 police department. So when Leonard has this scuffle with Ike
14 and Leonard calls DeJesus you may infer that what is actually
15 having is Leonard is calling the leader to inform the leader
16 that Leonard had a fight with Toribio who is somehow related to
17 the fight that DeJesus had the day before. DeJesus says be
18 there in two minutes.

19 Maybe's what a real leader does. Somebody else is
20 having a scuffle, he gets there in two minutes and we know he
21 shows up. You see, not knowing the answers to these questions
22 is not a problem in daily life. OK? It's just it's an
23 inconvenience, right, to not know when the train is going to
24 arrive. It's stomach churning to know that you are not going
25 to meet a deadline at your office. Again, in the context of a

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Closing Statement - Kaye

1 criminal trial, not knowing material facts means that the
2 government hasn't carried its burden.

3 We all want information which brings us to Leonard's
4 online search history. Admittedly he searched online multiple
5 times for a news story. What, if anything, that proves is pure
6 speculation. He searched several days in a row. Do you not
7 all have CNN apps on your phone an Wall Street apps on your
8 phone? Do you not search the news if something happens in your
9 neighborhood on your block, on your street? Something really
10 bad happened and he has a role in some of it somehow. So
11 please don't attach too much weight to the fact that he is
12 searching online for it. All that proves is that he's
13 interested in this newsworthy event. I doubt he is the only
14 one that is hungry for news.

15 Let's talk about the first six counts in the
16 indictment. First count, attempted murder in aid of
17 racketeering.

18 Now just as Mr. Gentile told you, the lawyers do not
19 substitute for the judges instructions which you will receive
20 at the end of the case. I just want to give you my thoughts on
21 how the facts may be applied to the various elements of the
22 crime.

23 Now the first element that the organization was an
24 enterprise beyond a reasonable doubt. I believe you will
25 conclude that the Bloods are an enterprise as it will be

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Closing Statement - Kaye

1 defined to you by the Court. What I am not so confident about
2 is whether this loosely organized subset, this Milla subset
3 operating in this very limited area whether that constitutes an
4 enterprise like the umbrella organization does, I am not so
5 sure that the subset itself is an association in fact. The
6 language of the charge says it has to be an association fact,
7 factually.

8 We have heard very, very minimal evidence about the
9 formation of Milla, about the structure of Milla, about the
10 hierarchy of Milla. Who was the leader? Who was the five
11 star? Who was the four star? Who are the members? What
12 racketeering activity have they actually engaged in these guys?

13 We have seen the Facebook posts of packaged weed back
14 from 2015. We've seen group photos. We saw a 20-second video,
15 21 seconds filmed by Leonard. But where is the racketeering
16 activity necessary to find that the government has proven the
17 first element of the first of six charges? You are here to
18 determine whether the shooting was in fact an act of
19 racketeering. But the government speaks as if it's a foregone
20 conclusion that this Milla subset engages in racketeering
21 activities just because of these drug sales and this shooting
22 event. It's almost circular logic. They engaged racketeering
23 activities because they engaged in crimes that you are here to
24 determine whether or not they engaged in. You make that
25 decision. That's not a foregone conclusion that they engaged

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1 in racketeering activities.

2 You have to determine whether it's personal or it's
3 gang-related. So the only other activities to determine
4 racketeering are narcotics sales, drug sales, which we don't
5 see. Let's talk about the photo with 20 or 30 guys in the
6 photo there.

7 What does that photo show? They are all hanging out
8 together, a bunch of guys. Does that mean they're all Blood
9 gang members? Does that mean that they're all Milla members?
10 Imagine this was not the Bronx but some leafy New Jersey
11 community and the people all gathered together. Would we rush
12 to conclude that this was a gang photograph? I don't think we
13 would. I just think that maybe one or two of them are dealers.
14 Looks like this guy Bigz Milla sells. But I think you would be
15 hard pressed on this evidence to conclude that they are an
16 enterprise engaged in racketeering activity.

17 I am sure The Bloods has an umbrella organization.
18 This is a Bronx local set and the connection is an extremely
19 tenuous one. I think as to narcotics the evidence at best
20 establishes that Leonard sells crack. But the connection
21 between his drug sales and the Milla is just very tenuous. It
22 seems more likely that Leonard is his own man. He engaged in
23 his own dealing. If you find that Leonard is a gang member.
24 It's totally within your province and no one will debate you on
25 that or call your judgment into question but I don't think it's

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1 the end of the equation. You need to find the enterprise
2 engaged in drug sales as a racketeering activity. And where is
3 the proof that he is sharing drug sale profits with other
4 members? Where is the proof that he is committing other drug
5 crimes with other members with other people? There is evidence
6 that Bigz Milla posted these red glassines on a Facebook
7 account in 2014 or 2015 but that's not evidence that in 2017
8 beyond a reasonable doubt Bigz Milla and Leonard and the rest
9 of them was engaged in a racketeering activity. I submit to
10 you the evidence only proves that Leonard sold drugs on his
11 own. There were one or two sales allegedly made by Bigz Milla
12 to Chicago where Chicago told us that Leonard told her that
13 Bigz had his work. One or two sales, I mean that could mean
14 that Leonard is sick that day. He's got the stomach virus that
15 day and Bigz got my work. This doesn't suggest narcotics
16 conspiracy. That doesn't suggest a cohesive group that Leonard
17 is working with Bigz Milla. That just doesn't. That doesn't
18 scream out to you that this is racketeering drug dealing.

19 The evidence is very strong that Leonard sells but two
20 occasions where Bigz Milla sold, even if you believe sold
21 Leonard's stuff to one of these ladies, I submit to you that
22 that does not satisfy the definition of the Bloods gang engaged
23 in racketeering activity. We are not seeing piles of cocaine
24 here and bricks of drugs here. Again, I leave that to your
25 judgment.

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Closing Statement - Kaye

1 Another element I would like to discuss is the
2 underlying crimes charged. Has the government proven to your
3 satisfaction beyond a reasonable doubt that the intent was to
4 kill? Was the intent to kill? Was the intent to injure? Was
5 the intent to scare? Was the intent to scatter? Let's assume
6 for a moment that you credit Ciara's testimony that DeJesus
7 really said I got to put in work for my homie. OK? What does
8 that mean?

9 Now let's go to the next level. What does it mean?
10 Go create general mayhem in the area. Go cause panic and
11 disorder. Does it mean that? I don't know. Do you know what
12 was said? Its' their burden. This is their case. Is this
13 really an intent to kill or is this an intent to wound? Is
14 this an intent to injure? Is this an intent to cause panic?
15 Just because shots are blown off, this is the workings of the
16 mind of a madman. That's not a place you want to occupy.
17 That's not a place any of us can think. This is the workings,
18 the machinations of DeJesus' mind. Who knows what his intent
19 was. We certainly don't know what, if anything, Leonard told
20 him to do or not do. It's not sufficient to conclude that this
21 was an intent to kill or an intent to wound just because
22 bullets are flying. This is not a case where somebody takes a
23 small caliber gun and presses it into the back of someone's
24 head and fires. That's an intent to kill, unmistakably so.
25 But those aren't facts here. Not proven.

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Closing Statement - Kaye

1 It's easy for to government to stand here and say
2 Leonard Mathews had an intent to kill or Juan DeJesus fired a
3 gun with intent to kill. But that's guesswork. It's
4 speculation. They are telling you to look at video. Who would
5 fire a shot on the street? I think human nature being what it
6 is, people are capable of all kinds of thoughts. And these are
7 not rational thoughts. Remember, these aren't people that
8 we're going to give our phones to. These aren't the people
9 that are going to housesit for us.

10 We haven't been given much evidence of how close or
11 how far away the target was. Where was Ike? I know
12 Mr. Gentile said "and that could be Ike crossing the street".
13 Could be Ike or could be one of another hundred people that was
14 on the street. Nobody's identified that person as Ike. So
15 when we talk about what the target was, what the intent was,
16 where was the target? I think the only person who said she saw
17 Ike there running was Deeana. And we know Deeana.

18 Second count is this conspiracy to commit murder. And
19 this charge requires you to find beyond a reasonable doubt that
20 there was an agreement between two or more people to kill.
21 "Conspiracy to commit murder" means an agreement to commit
22 murder. The record I submit to you is completely barren of any
23 evidence that there was ever a meeting of the minds. Where was
24 there an actual meeting? Where was there a meeting in fact?
25 Where? How? I am not saying it requires two people to sit

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Closing Statement - Kaye

1 down across the table to sign a contract agreement, we agree to
2 kill. It doesn't. That's not the law. But nonetheless, where
3 is the proof that there was an agreement? It's not here. So
4 when you're considering that count on the racketeering,
5 conspiracy to commit murder, look for proof beyond a reasonable
6 doubt of an agreement. I don't think you are going to find one
7 to your satisfaction. Meaning, the object of the conspiracy
8 has not been established, just like the object of the shooting
9 has not been established, just like the motive has not been
10 established.

11 Now in your deliberations and I don't want to get in
12 into your deliberations because it's your private world but I
13 will say this. If one juror expresses the opinion that the
14 government's proven Juan DeJesus' intent to kill, for example,
15 if you feel differently, share your thoughts. Stand up. Raise
16 your hand. Let your opinion be known. Each of you are a force
17 to be reckoned with. You must each be convinced beyond a
18 reasonable doubt, all 12 of you unanimously convinced and that
19 should tell you how important every single vote is. So you may
20 have a different opinion. If you do, stand up and express your
21 opinion that firing and dealing with the sick mind of DeJesus
22 does not clearly establish beyond a reasonable doubt that there
23 was an intent to kill or a conspiracy to kill. You will know
24 it. You will know reasonable doubt when you hear it.

25 It's like you leave the house in the morning. You get

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Closing Statement - Kaye

1 down to the street. Not all of you live in the city. I know
2 that. Make your way over to the train station. You are at the
3 platform waiting for the train. And then you say to yourself,
4 Did I lock the door? Did I lock the door? My keys are in my
5 bag. I usually lock the door every morning. I locked the
6 door. I'm sure I locked the door. But I am not sure that I
7 locked the door. There's a doubt. There is that nagging
8 annoying doubt. And sometimes you go all the way up out of the
9 train station. You walk all the way home. You get back into
10 the building. You go through your yard and you check the lock.
11 You looked the door. And you're like, Jesus. And you go all
12 the way back. That's a doubt.

13 It is not dissimilar to this tomb much doubt. It a
14 feeling. It's a gut feeling. Remember the first words I said
15 to you was your verdict will last forever. It will last
16 throughout all of eternity. It will always be on the books.
17 You must get it right.

18 Or did I shut the stove off? I made breakfast for the
19 kids. I made eggs, then I got busy and I got them out of the
20 door, you know? And you're like, I always shut the stove off.
21 But sometimes I do leave the stove on. And then you smell that
22 smell when it's actually the pot burning. It's not that
23 dissimilar. If you have that nagging feeling that you just,
24 you know what, I just don't know. I hear what the government
25 is saying. And I like Mr. Rodriguez and you like Mr. Gentile

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Closing Statement - Kaye

1 and like Mr. Bove and they seem like nice guys and you want to
2 believe their witnesses but you have that doubt.

3 Well, then you have to vote "not guilty". And
4 nobody's going to question your verdict. I will submit to you
5 that the most critical problem here with the government's case
6 and the primary reason why we submit you must acquit him are
7 Counts One through Six is the final element, the last element
8 of the charge. And it's not my role to give you the law.
9 Believe me. I do not know the law half as well as Judge
10 Oetken. But I want you to remember this. So I'm going to
11 refer to this as the maintain or increase language which is
12 built into the racketeering statute. Maintain or increase, you
13 must find beyond a reasonable doubt that the defendant's
14 general motivating purpose in willfully ordering this crime,
15 Theory A, right, Dish A, was to maintain or increase his
16 position in the Bloods.

17 If you don't find beyond a reasonable doubt that
18 Leonard did it and did it with the intent in his mind to
19 maintain or increase his position in The Bloods, this is an
20 acquittal. Not guilty on One, Two, Three, Four and Five. I
21 know you are going to convict him of Six. You have to find
22 beyond a reasonable doubt that that's what was intended. Or
23 you must find beyond a reasonable doubt that Leonard's general
24 motivating purpose in aiding and abetting DeJesus' commission
25 of the crime was to maintain or increase his position in the

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Closing Statement - Kaye

1 gang.

2 You can see the difference between the proof here,
3 right? Look at the proof of the drug dealing. It's really
4 substantial. It's overwhelming in fact. I'd be pretty foolish
5 to not come before you and take the position I've taken that
6 it's proven. I need to have credibility with the jury. Now
7 contrast that with the proof of maintaining an increase.
8 That's that nagging feeling again. That's the, Did I lock the
9 door? Was this done to maintain and increase someone's
10 position within the gang or again, was this just personal
11 stuff, silly stuff or the mind of DeJesus? You're being asked
12 to get inside the head of these people and they don't have the
13 evidence that let's you do that.

14 I say again, the government's proceeded on two
15 separate theories relating to the shooting. Believe me.
16 They're equally happy for you to accept either one and convict
17 Mr. Mathews but I maintain that the two separate theories is
18 working against them. It shows the weakness of the proof. If
19 the government doesn't know it, how should you the jury be able
20 to figure it out for them?

21 Theory one, Leonard willfully did it. Theory Two,
22 Leonard, he aided an abetted it. Whichever you believe, they
23 don't care. We submit that it can be both and the uncertainty
24 of the very charge is the essence of reasonable doubt. The
25 shooting of October 20th is tragic and is utterly senseless but

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1 to convict Leonard Mathews of it because you don't approve of
2 his lifestyle to convict Leonard because you don't approve of
3 his gang affiliation and his occupation is equally tragic and a
4 direct violation of your oath as jurors. You are never going
5 to right any wrong by cherry picking a theory of the prosecution
6 and convicting Leonard because his friend is a very bad man.

7 Now the evidence that Ciara and DeJesus committed this
8 crime is overwhelming, right? That's beyond a reasonable
9 doubt. The case against them is what beyond a reasonable doubt
10 looks like and tastes like and feels look. But the case
11 against Leonard should leave you scratching your head. And
12 this maintain or increase language that you must find beyond a
13 reasonable doubt, I submit to you is a huge amount. It's a
14 gigantic amount. It's Mount Kilimanjaro that you have to climb
15 to get to the top of to convict this man.

16 Now the government has argued that Leonard was
17 disrespected. He was disrespected by Ike and he had to prove
18 that he was tough. I submit to you that on these facts though
19 that is simply a ridiculous argument. It makes no sense that
20 Leonard would do that to Ike, a none rival that he grew up with
21 that placed his hands on his shoulder like friends that
22 disagree do. Their beef, whatever it was, seems equally likely
23 to have been personal, doesn't it? And not business at all.
24 And if Leonard did have DeJesus do a shooting to increase his
25 status, where is the proof of that? Where is the proof that

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1 Leonard had the motive to increase his status? It requires
2 speculation.

3 The government will tell you that the proof is this
4 random comment that Leonard, by Leonard that DeJesus is a rat.
5 Do you remember that testimony from Ciara? She said she
6 overheard him say he is a rat and he is going to pull his
7 papers. They need you to accept this concept hook, line and
8 sinker, right? Because if you accept the testimony of Ciara
9 that Leonard said oh, he's a rat, if you accept that then
10 you're almost there to what they want you to believe that this
11 was done by DeJesus to prove his loyalty. That's how you get
12 into his head. Oh, he did the shooting. So he doesn't get his
13 papers pulled. OK? But they need you to accept it as coming
14 from Homie.

15 Who does that important evidence come? From one
16 person, one individual and that's Ciara. Suicidal individuals
17 like Ciara Edwards, need emotional support. They need that
18 support. They feel that they have no where to turn. We don't
19 know what kind of support she's getting. We don't know what
20 kind of situation she goes home to. We don't know her actual
21 psychiatric diagnosis even. We don't know whether she's a
22 rational person in command of her thoughts, much less her
23 memory. You heard and you saw her affect, very flat,
24 rehearsed, run-on sentences, throwing the kitchen sink into as
25 many answers as she possibly could. I hope that some, if you

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1 not all, of you appreciate how very unlikely it is that Leonard
2 would ever say that he is actually thinking about pulling
3 DeJesus' papers in front of a young girl that he knew how long?
4 Two hours. He knows her two hours. She's standing here him in
5 front of his building and he is probably selling. He is
6 talking to someone else and he is going to say that in front of
7 her? That just doesn't have the ring of truth. That just
8 doesn't make any sense. And let's not forget it's coming from
9 her.

10 Now, alternatively, this second theory if DeJesus did
11 this on his own and Leonard aided and abetted him, how exactly
12 do you conclude on these facts that Leonard aided and Leonard
13 abetted DeJesus? What did Leonard do? What did he actually
14 do? What proof is there beyond a reasonable doubt that Leonard
15 aided and abetted DeJesus? He may have called DeJesus over to
16 tell him he just got into a fight with this guy, a fight that
17 somehow related to fight DeJesus got into the day before. That
18 makes sense to me. I can accept that. But beyond that, did
19 Leonard point Toribio out to the shooter? There is no evidence
20 of that. It was most likely Ciara that targeted Toribio
21 because there is no evidence that DeJesus ever met Toribio. So
22 let that sink in.

23 First fight, DeJesus, the two Mexicans. Toribio's not
24 there. The second fight, Leonard and Toribio. DeJesus is not
25 there. DeJesus doesn't even know Toribio. There is no

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1 evidence that he knows Toribio. It's likely that Ciara Edwards
2 targeted him for assassination. She was right there and she
3 knew him. There is no evidence that Leonard aided and abetted.

4 Did Leonard help DeJesus acquire the gun? Is there
5 any evidence that Leonard assisted them in acquiring the gun?
6 Any of the phone record any of the Facebook record? Any of the
7 websites they visited? Any of witnesses say anything? No.
8 There is no evidence of that. Did Leonard wipe down the gun?
9 Are you convinced beyond a reasonable doubt that Leonard wiped
10 down that gun after it's all over? Let's not forget that.
11 Again, it's back to Ciara. And even assuming she's remembering
12 that correctly, that would be after the fact.

13 It's the same analysis for this little birdie call.
14 Again, you can infer he doesn't want to see DeJesus go to
15 prison. I submit to you that is a just talk, just BS, talking,
16 talking, talking. One guy in jail. One guy not in jail.
17 Yeah, make a birdie disappear. What does that mean? Is there
18 any evidence that anybody made any efforts to hurt her?
19 Intimidate her? No. It's talk. That's all these guys do is
20 talk, talk, talk. They're on Facebook. They're on texting, on
21 the phone. Facebook must be the greatest law enforcement tool
22 since the fingerprint but it's just talk.

23 Let's go to the timeline here. Only the evidence that
24 doesn't require you to accept anything that Ciara testifies to.
25 Leonard gets into this scuffle. He calls DeJesus. DeJesus

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1 comes over. There's a flurry of activity. DeJesus has Ciara
2 acquire the gun. DeJesus and Ciara hand out inside the bodega.
3 Leonard is outside across the street. DeJesus exits. She
4 exits with him. They turn left and start to walk up the block
5 passed the ice machine. Leonard crosses the street. Does
6 Leonard continue to walk with them? We don't know. This is
7 where there's no video. They have video up, down and sideways
8 but they don't -- it's a full city block. Then when you reach
9 196 they travel another full city block.

10 I remember I asked every police witness about video.
11 Their answer was either nobody asked me to get to video or I
12 don't know. This is their case. They have to prove it beyond
13 a reasonable doubt. They have to prove Leonard aided and
14 abetted. What did he do? All he did was call probably his
15 boss and then hangs out. Yeah, he looks like he is in charge
16 and might be somebody was taking his water or giving him water.
17 That's not evidence. That's speculation. We know the shots
18 were fired and three innocent people were stricken. But based
19 on this evidence, I submit to you Leonard is merely present.

20 When the Court charges you on the law, there's a
21 specific charge on mere presence. Please pay close attention
22 to that mere presence charge when you are considering whether
23 or not the government has proven beyond a reasonable doubt that
24 Leonard aided and abetted. The Court will tell you in
25 substance that mere presence even with full knowledge of what's

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1 going on is not a criminal act if you don't have the intent to
2 commit a criminal act. You can literally be standing there
3 when somebody commits a crime, know they are going to commit a
4 crime. But if you are not involved it, you are standing right
5 next to them, you've committed no crime.

6 But again, we are discussing this all important final
7 element of the racketeering statute, proof that this was done
8 to increase or maintain Leonard's status beyond a reasonable
9 doubt. So in order to convict Leonard of Counts One through
10 Six, you need to fully credit Ciara's testimony on multiple
11 planes. That's Ciara that tells us that Ike and Leonard were
12 arguing or sets and the word "soldiers". But it's also Ciara
13 who told Detective Cole she can't remember what they argued
14 over. That is reasonable doubt staring us in the face. It is
15 also Ciara who tells you about that pulling of papers business.
16 So let's talk about Ciara.

17 This gives me no pleasure, whatsoever, because she is
18 plainly troubled. She is a prolific liar. We know that. And
19 she is a deeply disturbed woman. She's been selling drugs
20 since the age of nine or ten, astonishingly. She was kicked
21 out of school for selling weed. She was placed on juvenile
22 probation for posting revenge photos of her boyfriend's
23 ex-girlfriend on Facebook. What mind does that? What a
24 devious mind. She violated probation by running away to New
25 York City to deliver her baby here. She was abandoned by her

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1 mother. She worked as an unaged prostitute. She sold weed and
2 ecstasy here in New York City and God knows what else. She is
3 caught driving a car without a license and in possession of
4 cocaine. She was arrested and convicted of these crimes after
5 being warned by Mr. Rodriguez to stay out of trouble. And the
6 government signed her up with a non prosecution agreement even
7 after she got back into trouble. Sadly, she has attempted
8 suicide. She's proud to wear a gang affiliated T-shirt. Her
9 mother tried to kill her. Her mother's ex-boyfriend tried to
10 have a sexual relationship with her.

11 Supposedly, she takes the oath very seriously. She
12 told us that, I take the oath very seriously and then proceeds
13 to lie before the Bronx Grand Jury. She lied that she didn't
14 acquire the gun after taking the same oath she took before you.
15 She wasn't truthful with the Detective Cole. She wasn't
16 truthful with the Bronx prosecutor. She didn't stay out of
17 trouble and she tells us she committed this crime sober. She
18 was not high. She also tells us that she was willing to
19 smuggle contraband into jail. What kind of person is this to
20 base a verdict beyond a reasonable doubt on?

21 Ciara, how could you not have that nagging feeling in
22 the pit of your stomach despite all the video and all the
23 technology? I don't use any of that. I am coming to you
24 talking to you person to person without any -- how can you base
25 a verdict on her?

IA1AAMAT3

Closing Statement - Kaye

1 She has select memory loss. She doesn't remember how
2 many times she referred to Leonard Mathews as a friend in the
3 grand jury, instead of "big homie". She doesn't remember if
4 she told the government about this pulling DeJesus' papers
5 story. She doesn't remember what she and AUSA Rodriguez were
6 discussing before she told him the pulling of papers story.
7 She lies to you that she was going to report herself to the
8 police had she not been stabbed in the park by DeJesus. Do you
9 remember that? She told you that, yeah, if that never happened
10 to me I was going to report it. I was going to turn myself in.
11 Do you remember that? I hope you remember that because if you
12 remember that and you believe that, I have a bridge down the
13 street that I'd like to sell you. Pick either one, the
14 Brooklyn Bridge or the Manhattan Bridge or the Williamsburg
15 Bridge. I own them all.

16 After all of this she has the audacity to tell you
17 that she still thinks that she's one of the most honest people
18 alive. It's hard to fathom. It's hard for me to imagine this
19 woman's values, her morals and what she would or would not do
20 to save herself from a long prison sentence. Ask yourselves
21 what is it about Ciara that inspires confidence in her ability
22 to tell the truth? Sadly, not a thing. And if you decide that
23 she is not smiling in that photograph, OK. I'm willing to
24 accept that that's your impression. But if she is, then my
25 blood thirsty Bonnie and Clyde analogy from my opening

IA1AAMAT3

Closing Statement - Kaye

1 statement did come to pass.

2 Leopard Mathews lives in a neighborhood where Bloods
3 and Crips live and hang out. These are people he went to school
4 with. They are sometimes friends and they are sometimes at
5 odds. You may not like what he does. You may not approve of
6 the way he speaks. You may not like the way he handles himself
7 and people you associate with, the way he talks but this is
8 the United States District Court. This is the trial of the
9 criminal matter where your number one concern is identifying
10 proof beyond a reasonable doubt. You don't have to like him.
11 It's not what this is about. Where is the evidence that is
12 subjective personal intent was to increase or maintain his
13 position by having DeJesus do this shooting? Everyone of first
14 five charges flow from this increase and maintain concept. If
15 you did not find that the government has proven that beyond a
16 reasonable doubt, then you must vote guilty -- not guilty to
17 Count One, not guilty to Count Two, not guilty to Count Three,
18 not guilty to Count Four and not guilty to count Five. All of
19 these firearms offenses, they all flow from the increase and
20 maintain concept.

21 I know that you will each deliberate openly and
22 honestly to the best of your ability. Many of you have no
23 prior jury experience, just what you've read and just what
24 you've seen on TV. And for those of you I think we can agree
25 that real trial work is nothing like Netflix. In a real

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Closing Statement - Kaye

1 courtroom we have the Constitution to abide by. And the case
2 is not wrapped up in 45 minutes plus commercials. Here the
3 stakes are very real. If the motive was purely personal,
4 motive for money, love, jealousy, ego and had nothing to do
5 with crack or weed or blood, then this is not a violent crime
6 in furtherance of racketeering. This is just a narcotics case
7 against Leonard Mathews. And if you are not convinced beyond a
8 reasonable doubt that on either theory the motivation was to
9 maintain or enhance Leonard's position, again, there is just a
10 narcotics case against Leonard.

11 So I ask you to listen carefully for Mr. Rodriguez's
12 explanation of why there are two separate theories of the
13 government's case. Listen and remember my words as
14 Mr. Rodriguez tries to justify it because he will get the last
15 word. That's the system. If the government doesn't know, the
16 entity that has charged the defendant and brought the defendant
17 to trial before you, if it doesn't know it was the defendant's
18 idea or he ordered it or if it was DeJesus' idea and the
19 defendant aided and abetted him, that ladies and gentlemen is
20 the essence of reasonable doubt.

21 I honesty wish I could change Leonard's life with the
22 waive of my hand but I can't. It's in your hands.

23 THE COURT: Thank you, Mr. Kaye.

24 Ladies and gentlemen, there's one additional closing
25 argument before we break for lunch and that is the government's

IA1AAMAT3

Rebuttal - Mr. Rodriguez

1 rebuttal summation.

2 Mr. Rodriguez, you may proceed.

3 MR. RODRIGUEZ: I'm standing up here because it is the
4 government's burden of proof in this trial. We have the burden
5 of proving beyond a reasonable doubt that the defendant,
6 Leonard Mathews, is guilty and we have met that burden of
7 proof.

8 Mr. Kaye could have said nothing throughout this
9 entire trial because the defendant doesn't have the burden to
10 do anything. But because he got up here for the past hour and
11 35 minutes, I get a chance to respond. I get a chance to tell
12 you and explain to you how everything he just said was nothing
13 more than a sideshow and a distraction from the devastating
14 overwhelming proof of the defendant's guilt.

15 You have the right to scrutinize everything Mr. Kaye
16 just said. Just like you've scrutinized everything that every
17 other person in this courtroom has said. Look past the
18 distractions. Juan DeJesus is not on trial right now. Ciara
19 Edwards is not on trial right now. Leonard Mathews is on trial
20 right now and we have proven his guilt beyond a reasonable
21 doubt.

22 Before I get to some of Mr. Kaye's specific arguments,
23 let's start with the bedrock foundational evidence in this case
24 and it fits into five categories.

25 First, the surveillance video, the video that showed

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Rebuttal - Mr. Rodriguez

1 you exactly what happened on the night of the shooting. Now
2 Mr. Kaye says that these are violent movies. But as you saw
3 from the presentation from Mr. Gentile today, these movies told
4 you exactly what happened that night. They told you almost
5 everything you need to know about the defendant and the role he
6 played in these crimes.

7 Second, the phones, the phone that was recovered from
8 Mr. Mathews and the phone that was recovered from Mr. DeJesus
9 with the text messages and the pictures and videos that they
10 never thought you would see; evidence that proves to you that
11 the defendant is a leader in the GMB set of The Bloods and that
12 the shooting of ice ache Toribio was motivated by gang
13 membership of both the defendant and Juan DeJesus.

14 Third piece of bedrock foundational evidence, the call
15 records, records that show that the defendant called his
16 soldier, Juan DeJesus, to his side minutes after the fight.
17 Records that show that the defendant called Keisha Hood and
18 spoke to her multiple times after the shooting. Why? To
19 silence her, to silence her and to silence Deean Seabrooks.
20 Records that reflect hundreds of calls and text messages over
21 the course of almost a year between the defendant and Ms. Hood.
22 These communications went on as he sold her poison everyday.

23 Fourth, the Facebook posts, posts that confirm the
24 membership of this gang and the pride that the defendant's foot
25 soldier showed and being part of the gang's violence and drug

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Rebuttal - Mr. Rodriguez

1 dealing.

2 Fifth and final, the defendant's own recorded works.
3 You saw that video of the defendant proudly declaring that he's
4 a big homie in the Bloods. You saw the defendant days after
5 the shooting tell blatant lies to Detective Maye, lies in which
6 he claimed to not even know who his trusted foot soldier was.
7 He lied because he knew he was guilty. Why? Because he was
8 motivated to try and protect DeJesus and other members of the
9 gang for their roles in the shooting of Isaac Toribio and the
10 stabbing of Ciara Edwards.

11 Two weeks after that you heard the defendant on a call
12 with DeJesus who was already in jail. And in that call he
13 referred to someone he recruited in the gang as his brother.
14 He referred to Bigz Milla and his brother. He used code words
15 to tell DeJesus that he tried to have Ciara Edwards murdered.
16 He tried to have Ciara Edwards murdered after DeJesus failed to
17 finish the job on the night of October 20, 2017. You heard the
18 defendant joke about how DeJesus had put her in medical time.

19 All of this core bedrock evidence, the videos, the
20 phones, the call records, the Facebook posts, the defendant's
21 own words, this evidence shows you that the government's
22 witnesses told the truth. And when you hear and follow Judge
23 Oetken's instructions on the law, you will know that all of
24 this core evidence demonstrates that the defendant is guilty of
25 each one of six charges in the indictment.

IA1AAMAT3

Rebuttal - Mr. Rodriguez

1 So let's turn to some of Mr. Kaye's more specific
2 arguments. Let's talk about Ciara Edwards. Mr. Kaye got up
3 here and said she is a prolific liar. You'll remember from his
4 opening statement, Mr. Kaye had this to say about the agreement
5 between Ms. Edwards and the government. They literally made a
6 deal with -- well, you know the end -- the devil.

7 Did Ciara Edwards look like the devil to you?
8 Remember that video of her outside of the deli the night of the
9 shooting nervously crossing her hands in front before she was
10 being directed to carry a gun for members of the Bloods, a
11 child amongst a group of men with a history of violence and
12 access to weapons.

13 She admitted that she was a willing participant in
14 this, at least up until the part where DeJesus tried to kill
15 her. She accepted responsibility for her role. But remember
16 what that role was. She was a courier for a gun that was used
17 by DeJesus in the shooting ordered by the defendant. She
18 carried a gun for these men who were working together to kill
19 someone. Her role in this hardly makes her the devil in this
20 group of men including the defendant.

21 Did she sound like the devil when she was up there on
22 that witness stand? I submit to you that the answer is
23 "absolutely not". She was completely unapologetically honest
24 about her prior crimes, about the times in her past when she
25 was not truthful and about the personal horrors that she's

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Rebuttal - Mr. Rodriguez

1 experienced. About Juan DeJesus forcing her to sell her body,
2 about her mother trying to kill her and about her history of
3 drug dealing.

4 Now, Mr. Kaye wants you to believe that because she
5 signed a non prosecution agreement, that she got some sort of
6 sweetheart deal out of this, a deal that you'll never see, even
7 though Mr. Kaye could have shown you that agreement and
8 introduced it into evidence.

9 But when you think about that and you think about this
10 deal that she got, think about the 650 stitches she got. Think
11 about her collapsed lung. Think about the horrors that she's
12 been living through as a result of October of 2017. Now
13 Ms. Edwards told you on redirect, she doesn't have any
14 ill-feelings against the defendant. No bias. She was here to
15 do one thing, tell you the truth, tell you the truth and move
16 on with her life.

17 Now it's true that Ms. Edwards has not always been
18 truthful in the past. And she owned up to that. She was not
19 entirely truthful with the state grand jury on October 31,
20 2017. Put yourself in her shoes on that day. Where did she
21 come from that day? She had to testify on the same day she was
22 released from the hospital.

23 (Continued on next page)
24
25

IA1KMAT4

Rebuttal - Mr. Rodriguez

1 MR. RODRIGUEZ: (Continuing) She was scared to death.

2 And, yes, when she met with Detective Cole at a diner
3 for an interview earlier this year, she kept some things from
4 him as well, and she told you that. Why? Because she was
5 still scared to death.

6 It's up to you to think about what you saw in this
7 courtroom, as you evaluate the testimony of Ciara Edwards. And
8 as you do that, please pay careful attention to how her
9 testimony is consistent with and supported by all of the other
10 types of evidence: The video, the phones, the phone records,
11 the Facebook posts, and the defendant's own words.

12 Now, Mr. Kaye got up here, and he made a lot of
13 arguments about why this shooting happened. Maybe it was for
14 purely personal reasons, sports, politics. Who knows? Who
15 knows what they were thinking, he said. He said the government
16 called the wrong witnesses. I guess we should have called
17 mindreaders to the stand.

18 But we didn't need to call mindreaders to the stand,
19 because we know what this fight was about. Ciara Edwards told
20 us what this fight was about. She was standing right there.
21 She told you that the person that Mathews fought with told him,
22 this wasn't for your soldier to handle. If there's problems
23 with the set, it's for you to handle. She told you about how
24 he said something disrespectful to Leonard Mathews.

25 Now, I expect that Judge Oetken will instruct you that

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Rebuttal - Mr. Rodriguez

1 one of the elements of Counts One, Two, and Three is that the
2 crime was committed for the general purpose of maintaining or
3 increasing status in the Bloods. It doesn't have to be the
4 only motivation. Ladies and gentlemen, we met our burden on
5 this element.

6 Ike insulted the defendant verbally and physically in
7 the heart of Bloods territory that the defendant controlled.
8 In light of all of the evidence of the defendant's proud
9 leadership in this gang, it simply defies common sense to argue
10 that he ordered this shooting based on some purely personal
11 motive. That's just not what the evidence shows.

12 You saw on video as he assembled the members of his
13 gang, as he continued to stalk Toribio, as he reenacted the
14 fight for his fellow gang members, as he directed DeJesus to
15 get the gun, and get in that store, and check it out, as he
16 walked with DeJesus to go find Toribio. And where did they go
17 after? You saw them reassemble the members of his gang at his
18 own apartment.

19 Ladies and gentlemen, the motivation of Juan DeJesus
20 matters, too. As you think about the evidence of what
21 motivated this crime, please listen carefully to Judge Oetken's
22 instructions about aiding and abetting and willfully causing
23 these crimes. I expect Judge Oetken will instruct you that if
24 the defendant knowingly caused Juan DeJesus to commit this
25 shooting, and he knew that when he did that, that DeJesus was

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Rebuttal - Mr. Rodriguez

1 motivated by his own status in the gang, that DeJesus would
2 obey his command because the defendant was his big homie.

3 If that happens, the government has met its burden.
4 You know that DeJesus participated in this to maintain and
5 increase his status in the gang. During the fight on
6 October 19, outside that same bodega on Kingsbridge and
7 Creston, the defendant -- excuse me, DeJesus was acting as the
8 bodyguard for the defendant, on the defendant's own drug
9 territory. He was protecting the defendant on the gang's turf.

10 On the night of the shooting, the defendant summoned
11 him to that same bodega and ordered him to go after Ike. The
12 basic rules of the gang required him to follow that command.
13 And DeJesus knew what he was doing. He knew that by doing what
14 he would do, he would increase his status in the gang, because
15 of his willingness to engage in acts of violence.

16 The government is not giving you two plates of food
17 and asking you to choose whichever one you want. Both, both
18 Leonard Mathews and Juan DeJesus did what they did to maintain
19 and increase their own positions in the gang and the positions
20 of one another. The soldier helped his leader. His leader
21 gave the soldier an order.

22 Now, Mr. Kaye has made several arguments as well about
23 the defendant's drug-dealing operation, how he's just a lone
24 wolf drug dealer completely unconnected to the Bloods. This
25 argument is a sideshow, for a few reasons:

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Rebuttal - Mr. Rodriguez

1 First, let's be clear: This argument has nothing to
2 do with Count Six, a count that Mr. Kaye didn't really have
3 much to say about. Judge Oetken will instruct you that for
4 purposes of Counts One, Two, and Three, the government has the
5 burden of establishing that the Bloods were involved in
6 racketeering activity.

7 Now, there are two types of racketeering activity
8 involved. One involves attempted murder and conspiracy to
9 commit murder. The other involves drug-dealing.

10 So, even if Mr. Kaye is right that the defendant was
11 some sort of a lone wolf drug dealer, it's clear that the gang
12 he lead was involved in this alleged violence-related activity.
13 Gang members attempted to kill Isaac Toribio. On the same
14 night, a gang member attempted to kill Ciara Edwards. And
15 three weeks after the slashing, the defendant admitted on a
16 prison call with Juan DeJesus that he tried to kill Ciara
17 Edwards again.

18 So even if Mr. Kaye is correct about this
19 drug-dealing, the government has still met its burden on the
20 elements of Counts One, Two, and Three, because the gang was
21 involved in racketeering activity involving attempted murder
22 and conspiracy to commit murder.

23 But here's the thing: Mr. Kaye was wrong. Very
24 wrong. The defendant's drug-dealing was related to the Bloods,
25 because he sold drugs in his gang's territory while protected

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Rebuttal - Mr. Rodriguez

1 by his other gang members.

2 Remember the scale from the defendant's apartment?
3 That scale was covered in crack residue in January 2018. And
4 it was found in a place that was not only the defendant's
5 bedroom, but one of his gang's central locations. The place
6 where they all met up to wipe down the gun that had been used
7 to try and kill Ike.

8 And you know from Bigz Milla's Facebook posts that he
9 was selling marijuana for the Bloods. Remember those pictures
10 of packaged marijuana in Bloods' red bags. And you know from
11 the testimony of Deeanna Seabrooks that Bigz Milla helped the
12 defendant -- helped Bigz Milla sell crack cocaine with the
13 defendant.

14 Now, Mr. Kaye wants you to believe that Bigz Milla was
15 some sort of substitute teacher when Leonard Mathews had the
16 day off. Nonsense. Bigz Milla was out there selling crack
17 cocaine at the direction and with the assistance of Leonard
18 Mathews.

19 So, for all these reasons, the defendant's gang was
20 involved in racketeering activity that included drug-dealing.
21 The government has met its burden on that element.

22 Mr. Kaye seems to suggest that when it comes to being
23 the big homie, Leonard Mathews is a very different kind of big
24 homie. He is just the big homie of his own apartment, the big
25 homie of 2615 Jerome Avenue. Nonsense. You saw that video.

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Rebuttal - Mr. Rodriguez

1 You've seen all of the evidence of the defendant's leadership
2 in the gang, and you heard the testimony of Ciara Edwards.
3 Mr. Kaye says where was this meeting of the minds to shoot and
4 kill Isaac Toribio? You saw it on video. You saw an actual
5 meeting in front of that deli. Mr. Kaye wants you to believe
6 that whatever happened was led not by Mr. Mathews, but by
7 Mr. DeJesus.

8 Remember that video of Mr. Mathews standing in the
9 center, surrounded by other people? Ask yourselves: Who was
10 the leader in that situation?

11 Do you remember Mr. Mathews directing Ciara Edwards
12 into that convenience store? Ask yourselves: Who was the
13 leader? Mr. Mathews.

14 Mr. Kaye also wants you to believe that with this
15 shooting, there was no intent to kill. How could you possibly
16 infer from someone shooting a gun at another person that there
17 was an intent to kill?

18 Did you see on that video Juan DeJesus firing the gun
19 straight up in the air? Or did you see him firing right down
20 the block at someone who's running ahead of him? More
21 distractions and nonsense, to get you not to focus on the
22 evidence.

23 Ladies and gentlemen, I don't have the time, nor do I
24 need to go through each of the distracting arguments that the
25 defense made today, but let me say this: He said a lot about

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Rebuttal - Mr. Rodriguez

1 the burden in this case. And make no mistake about it: The
2 burden is the government's, and we embrace it. It's the
3 standard that has been used in every criminal case in the
4 history of this country. But it's not magical. It's guided by
5 common sense. It's not insurmountable. And it's been met
6 here.

7 Very shortly, Judge Oetken is going to instruct you on
8 the law, but you, the jury, are entrusted with finding the
9 facts in this case. Look past the distractions. Look at the
10 evidence. You know the defendant was a Bloods leader. He
11 ordered his Bloods soldier, Juan DeJesus, to shoot and kill
12 Isaac Toribio, the person who disrespected the defendant.
13 Didn't need to knock him out, didn't need to tear his shirt, he
14 raised his hand, and he showed disrespect on the corner where
15 the defendant sells drugs.

16 The defendant helped Juan DeJesus find Ike and do the
17 shooting. He called him to his side. He directed traffic. He
18 walked with him up Creston to find Ike, to point him out.

19 The defendant worked with DeJesus, with Ciara Edwards,
20 and with others, to get it done and then cover it up. Three
21 people were shot because of what the defendant did. People
22 were shot because of an order the defendant gave to maintain
23 his revered position in the Bloods, an order he gave knowing
24 full well that his foot soldier would gladly obey it, an order
25 the defendant himself helped carry out.

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Rebuttal - Mr. Rodriguez

1 The defendant gave this order to Juan DeJesus because
2 he knew his foot soldier wouldn't think twice about putting in
3 some work for his big homie. Because that's what's expected of
4 a foot soldier like Juan DeJesus. That's what a foot soldier
5 has to do to keep his position in the gang - follow orders and
6 get the job done by any means necessary.

7 Let me end with this: As you deliberate, think about
8 the three women who the defendant wants to silence. Think
9 about that jail call between Mathews and DeJesus a few weeks
10 after the shooting, the call that Mr. Kaye refers to as just
11 talk, the call that when Mathews told DeJesus he was trying to
12 see if he could make that little birdie disappear. Mathews was
13 talking about Ciara Edwards and how he wanted her dead, how he
14 wanted to make sure she would never take that stand and testify
15 against him.

16 Think about Deeanna Seabrooks, how the defendant
17 wanted to silence her. The defendant didn't care that she got
18 shot because of what he did. He gave her free crack cocaine,
19 so that she would keep her mouth shut and keep buying from him.

20 Think about Keisha Hood. The defendant made crystal
21 clear to her on the phone, on the night of the shooting, he's
22 the one who did this, so keep your mouth shut.

23 Ladies and gentlemen, the defendant failed to keep his
24 women quiet. They courageously sat on this stand, and they
25 laid bare who the defendant is and what mattered most to him.

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1 He's a person who sells poison. He's a person who did whatever
2 it took to maintain his position as a big homie in the Gangsta
3 Milla Bloods, no matter how many people got hurt along the way.

4 I submit to you that you should believe these three
5 women. These three women are completely backed up by all of
6 the other evidence in this case: The video, the phones, the
7 phone records, the Facebook posts, and the defendant's own
8 words.

9 Hold the defendant accountable for the lives he has
10 ruined. Return the only verdict that is consistent with the
11 evidence, the law, and common sense. On every crime charged,
12 every count, the defendant is guilty.

13 THE COURT: Members of the jury, you've now heard the
14 closing arguments of both parties in the case. I have to tell
15 you one more time not to discuss the case. I'm going to let
16 you go for lunch. We'll take an hour for lunch. The reason I
17 have to tell you that one more time is because I haven't yet
18 instructed on the law. I want you to have lunch before that
19 because I will go through in great detail how you need to think
20 about every single count under the law, and precisely what each
21 element is for that count, and what the meaning of those
22 elements are.

23 So you're not yet deliberating. After I instruct you
24 on the law, I will send you to the jury room to begin your
25 deliberations. So one more time, you're not to discuss the

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1 case because you're not yet deliberating. We'll come back at
2 2:30, and, at that point, I'll instruct you on the law, and
3 then you'll begin your deliberations.

4 Thanks, everybody. Please leave your pads on your
5 chairs. Have a good lunch.

6 (Jury not present)

7 THE COURT: Thanks, everyone. We'll be in recess till
8 2:30.

9 (Luncheon recess)

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1 AFTERNOON SESSION

2 2:45 PM

3 (Trial resumed; jury not present)

4 THE COURT: Good afternoon.

5 COUNSEL: Good afternoon.

6 THE COURT: Everybody ready for the jury?

7 MR. RODRIGUEZ: Yes, your Honor.

8 Two quick things: The exhibit cart is ready to go.

9 We did include the transcripts that were admitted as aids to
10 the jury in there. We did not include the controlled
11 substances. If I suppose the jury wants to see them, they can
12 send a note, and we'll have them ready, but we didn't include
13 it in the cart.

14 THE COURT: Okay.

15 MR. KAYE: Also, your Honor, I have the two defense
16 exhibits. Maybe I can include them on that cart or hold them
17 separately. What would you suggest?

18 THE COURT: We should probably put them on the same
19 cart. Or do you have a preference?

20 MR. KAYE: No.

21 MR. RODRIGUEZ: That's fine with the government.

22 Okay. Everybody ready?

23 MR. KAYE: Yes, Judge.

24 (Continued on next page)

25

IA1KMAT4

Charge

1 (Jury present)

2 THE COURT: Good afternoon.

3 JURY MEMBERS: Good afternoon.

4 THE COURT: Members of the jury, you have now heard
5 all the evidence in the case as well as the final arguments of
6 the parties. We have reached the point where you are about to
7 undertake your final function as jurors. You've paid careful
8 attention to the evidence, and I am confident that you will act
9 together with fairness and impartiality to reach a just verdict
10 in this case.

11 My duty at this point is to instruct you as to the
12 law. There are three parts to these instructions. First, I'm
13 going to give you some general instructions about your role and
14 about how you're to decide the facts of the case. These
15 instructions really would apply to just about any trial.
16 Second, I'll give you some specific instructions about the
17 legal rules applicable to this particular case. And Third,
18 I'll give you some final instructions about procedure.

19 It is your duty to accept these instructions of law
20 and to apply them to the facts as you determine them. With
21 respect to legal matters, you must take the law as I give it to
22 you. If any attorney or witness has stated a legal principle
23 that differs from those in my instructions, it is my
24 instructions that you must follow. You must not substitute
25 your own notions or opinions of what the law is or ought to be.

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Charge

1 Listening to these instructions may not be easy. It
2 is important, however, that you listen carefully and
3 concentrate. I ask you for your patient cooperation and
4 attention. You'll notice that I'm reading these instructions
5 from a prepared text. It would be more lively, no doubt, if I
6 just improvised, but it's important that I not do that. The
7 law is made up of words, and those words are very carefully
8 chosen. So it's critical that I use exactly the right words.

9 Now, you'll have copies of what I am reading in the
10 jury room to consult, so don't worry if you miss a word or two.
11 But for now, listen carefully and try to concentrate on what
12 I'm saying. Remember, you are to consider these instructions
13 together as a whole. You're not to isolate or give any undue
14 weight to any single instruction.

15 As members of the jury, you are the sole and exclusive
16 judges of the facts. You pass upon the evidence. You
17 determine the credibility of the witnesses. You resolve such
18 conflicts as there may be in the testimony. You draw whatever
19 reasonable inferences you decide to draw from the facts as you
20 have determined them, and you determine the weight of the
21 evidence.

22 Do not conclude from any of my questions, or any of my
23 rulings on objections, or anything else that I have done during
24 this trial that I have any view as to the credibility of the
25 witnesses or how you should decide the case. Any opinion I

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Charge

1 might have regarding the facts is of absolutely no consequence.
2 It is your sworn duty, and you have taken the oath as jurors to
3 determine the facts.

4 Just as I have my duties as a judge, and you have your
5 duties as jurors, it has been the duty of each attorney in this
6 case to object when the other side offered testimony or other
7 evidence that the attorney believed is not properly admissible.
8 It has been my job to rule on those objections. Therefore, why
9 an objection was made or how I ruled on it is not your
10 business. You should draw no inference from the bare fact that
11 an attorney objects to any evidence. Nor should you draw any
12 inference from the fact that I might have sustained or
13 overruled an objection.

14 From time to time, the lawyers and I have had
15 conferences outside of your hearing. These conferences
16 involved procedural and other matters, and none of the events
17 related to these conferences should enter into your
18 deliberations at all.

19 To be clear, personalities and the conduct of counsel
20 in the courtroom are not in any way at issue. If you formed
21 reactions of any kind as to any of the lawyers in the case,
22 favorable or unfavorable, whether you approved or disapproved
23 of their behavior as advocates, those reactions should not
24 enter into your deliberations.

25 In reaching your verdict, you must remember that all

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1 parties stand equal before a jury in the courts of the United
2 States. The fact that the government is a party and the
3 prosecution is brought in the name of the United States does
4 not entitle the government or its witnesses to any greater
5 consideration than that accorded to any other party. By the
6 same token, you must give it no less deference. The government
7 and the defendant stand on equal footing before you.

8 It would be improper for you to consider, in reaching
9 your decision as to whether the government has sustained its
10 burden of proof, any personal feelings you may have about the
11 defendant's race, religion, national origin, gender, sexual
12 orientation, or age. All persons are entitled to the same
13 presumption of innocence, and the government has the same
14 burden with respect to all persons.

15 Similarly, it would be improper for you to consider
16 any personal feelings you have about the race, religion,
17 national origin, gender, sexual orientation, or age of any
18 other witness or anyone else involved in the case. The
19 defendant is entitled to a trial free from prejudice, and our
20 judicial system cannot work unless you reach your verdict
21 through a fair and impartial consideration of the evidence.

22 Now I will instruct you on the presumption of
23 innocence. The law presumes the defendant to be innocent of
24 all charges against him. In this case, the defendant before
25 you has pleaded not guilty. In so doing, he has denied the

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1 charges in the indictment; thus, the government has the burden
2 of proving the defendant's guilt beyond a reasonable doubt.

3 This burden never shifts to the defendant. In other
4 words, the defendant does not have to prove his innocence. He
5 is presumed to be innocent of the charges contained in the
6 indictment. The defendant thus began the trial here with a
7 clean slate. The presumption of innocence was in his favor
8 when the trial began, continued in his favor throughout the
9 entire trial, remains with him even as I speak to you now, and
10 persists in his favor during the course of your deliberations
11 in the jury room.

12 This presumption of innocence alone requires you to
13 acquit the defendant unless you, as jurors, are unanimously
14 convinced beyond a reasonable doubt of his guilt after a
15 careful and impartial consideration of all the evidence in the
16 case. The presumption of innocence is removed if, and only if,
17 as members of the jury, you are satisfied that the prosecution
18 has sustained its burden of proving the defendant guilty beyond
19 a reasonable doubt.

20 Now, the question naturally arises: What exactly is a
21 reasonable doubt? The words almost define themselves. A
22 reasonable doubt is a doubt that a reasonable person has after
23 carefully weighing all the evidence. It is a doubt founded in
24 reason and arising out of the evidence in the case, or the lack
25 of evidence. Reasonable doubt is a doubt that appeals to your

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1 reason, your judgment, your experience, your common sense.
2 Proof beyond a reasonable doubt must, therefore, be proof of
3 such a convincing character, that a reasonable person would not
4 hesitate to rely and act upon it in the most important of his
5 or her own affairs.

6 I must emphasize that beyond a reasonable doubt does
7 not mean beyond all possible doubt. It is practically
8 impossible for a person to be absolutely and completely
9 convinced of any disputed fact that, by its very nature, cannot
10 be proved with mathematical certainty. In the criminal law,
11 guilt must be established beyond a reasonable doubt, not all
12 possible doubt.

13 Further, the government is not required to prove each
14 element of the offense by any particular number of witnesses.
15 The testimony of a single witness may be enough to convince you
16 beyond a reasonable doubt of the existence of the elements of
17 the charged offense if you believe that the witness has
18 testified truthfully and accurately related -- if you believe
19 that the witness has truthfully and accurately related what he
20 or she has told you.

21 That all said, if, after a fair and impartial
22 consideration of all the evidence and the lack of evidence, you
23 have an abiding belief as to the defendant's guilt beyond a
24 reasonable doubt, a belief that you would be willing to act
25 upon without hesitation in important matters in the personal

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1 affairs of your own life, then it is your sworn duty to convict
2 the defendant.

3 On the other hand, if, after a fair and impartial
4 consideration of all the evidence and the lack of evidence, you
5 are not convinced of the guilt of the defendant with respect to
6 the charges in the indictment, if you do not have an abiding
7 conviction of the defendant's guilt, in sum, if you have such a
8 doubt as would cause you, as prudent persons, to hesitate
9 before acting in matters of importance to yourselves, then you
10 have a reasonable doubt, and in that circumstance, it is your
11 sworn duty to return a verdict of not guilty on that count in
12 the indictment.

13 In reaching that determination, your oath as jurors
14 commands that you are not to be swayed by sympathy or
15 prejudice. You are to be guided solely by the evidence in this
16 case, and you are to apply the law as I instruct you. As you
17 sift through the evidence, you must ask yourselves whether the
18 prosecution has proven the defendant's guilt. Once you let
19 fear, or prejudice, or bias, or sympathy interfere with your
20 thinking, there is a risk that you will not arrive at a true
21 and just verdict. Thus, if you have a reasonable doubt as to
22 the defendant's guilt, then you must render a verdict of not
23 guilty. But if you should find that the prosecution has met
24 its burden of proving the defendant's guilt beyond a reasonable
25 doubt, then you should not hesitate because of sympathy or for

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1 any other reason to render a verdict of guilty.

2 The question of possible punishment to the defendant
3 is of no concern to the jury and shouldn't enter into or
4 influence your deliberations. The duty of imposing sentence in
5 the event of a conviction rests exclusively upon the Court.
6 Your function is to weigh the evidence in the case and
7 determine whether or not the defendant is guilty beyond a
8 reasonable doubt solely on the basis of such evidence. Under
9 your oath as jurors, you cannot allow any consideration of
10 punishment that may be imposed upon the defendant, if he is
11 convicted, to influence your verdict.

12 Similarly, it would be improper for you to allow any
13 feelings you might have about the nature of the crimes charged
14 to interfere with your decision-making process. Your verdict
15 must be based exclusively upon the evidence or the lack of
16 evidence in the case.

17 Now, I've repeatedly referred to the evidence in the
18 case. That raises an important question: What is evidence? I
19 instruct you that evidence consists of the sworn testimony of
20 the witnesses, the exhibits received in evidence, and the
21 stipulations of the parties. In determining the facts, you
22 must rely upon your own recollection of the evidence.

23 What, then, is not evidence? I instruct you that the
24 following does not count as evidence:

25 First, testimony that I have stricken or excluded is

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1 not evidence. You may not use it in rendering your verdict.
2 If certain testimony was received for a limited purpose, you
3 must follow the limiting instructions I have given and use the
4 evidence only for the limited purpose I indicated.

5 Second, any exhibit that was not received into
6 evidence is not evidence. Thus, exhibits marked for
7 identification, but not admitted, are not evidence, nor are
8 materials that were used only to refresh a witness'
9 recollection.

10 Third, arguments by the lawyers are not evidence. The
11 reason is simple: Advocates are not witnesses. The opening
12 and closing arguments of both sides explain how both side wants
13 you to analyze the evidence, which consists of the testimony of
14 witnesses, the documents, and other exhibits that were entered
15 into evidence and the stipulations of the parties. What the
16 lawyers have said to you is intended to help you understand the
17 evidence, and the lack of evidence, as you deliberate to reach
18 your verdict. However, if your recollection of the facts
19 differs from the lawyers' opening statements, questions to
20 witnesses, or summations, it is your recollection that
21 controls, not theirs. For the same reasons, you are not to
22 consider a lawyer's or a party's questions as evidence. Only
23 the witnesses' answers are to be considered evidence, not the
24 questions.

25 Finally, any statements that I may have made do not

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1 constitute evidence. It is for you alone to decide the weight,
2 if any, to be given to the testimony you have heard and the
3 exhibits you have seen.

4 I will now discuss at slightly greater length some
5 important matters related to evidence.

6 There are two types of evidence that you may properly
7 consider in reaching your verdict.

8 One type of evidence is direct evidence. Direct
9 evidence is testimony by a witness about something he knows by
10 virtue of his own senses - something he has seen, felt, touched
11 or heard. For example, if a witness testified that when he
12 left the house this morning, it was raining, that would be
13 direct evidence about the weather.

14 The second type of evidence is circumstantial
15 evidence. Circumstantial evidence is evidence that tends to
16 prove a disputed fact indirectly by proof of other facts.
17 There is a simple example of circumstantial evidence that we
18 often use in this courthouse.

19 Assume that when you came into the courthouse this
20 morning, the sun was shining, and it was a nice day outdoors.
21 Assume that the courtroom shades were drawn, and you couldn't
22 see anything outside. Assume further that as you were sitting
23 here, someone walked in with an umbrella that was dripping wet,
24 and then a few minutes later, somebody else walked in with a
25 raincoat that was dripping wet.

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1 Now, because you couldn't look outside the courtroom,
2 and you could not see whether it was raining, you would have no
3 direct evidence of that fact. But, on the combination of facts
4 that I've asked you to assume, it would be reasonable and
5 logical for you to conclude that it was raining.

6 That is all there is to circumstantial evidence. You
7 infer, on the basis of your reason, experience, and common
8 sense from one fact that's established, the existence or
9 nonexistence of some other fact.

10 As you can see, the matter of drawing inferences from
11 facts in evidence is not a matter of guesswork or speculation.
12 An inference is a logical, factual conclusion that you might
13 reasonably draw from other facts that have been proven.

14 Many material facts, such as someone's state of mind,
15 are rarely easily proven by direct evidence. Usually such
16 facts are established by circumstantial evidence and the
17 reasonable inferences that you draw. Circumstantial evidence
18 may be given as much weight as direct evidence. The law makes
19 no distinction between direct and circumstantial evidence, but
20 simply requires that, before convicting a defendant, the jury
21 must be satisfied of the defendant's guilt beyond a reasonable
22 doubt based on all the evidence in the case.

23 There are times when different inferences may be drawn
24 from the evidence. The government asks you to draw one set of
25 inferences. The defendant asks you to draw another set of

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1 inferences. It is for you, and you alone, to decide what
2 inferences you will draw.

3 You've heard evidence in the form of stipulations that
4 contain facts that were agreed to be true. In such cases, you
5 must accept those facts as true. However, it is for you to
6 decide what weight, if any, to give to those facts.

7 As I've already explained, you should draw no
8 inference or conclusion, for or against, any party by reason of
9 lawyers making objections or my rulings on such objections. By
10 the same token, nothing I say is evidence. If I commented on
11 the evidence at any time, do not accept my statements in place
12 of your recollection or your interpretation. It is your
13 recollection and interpretation that govern.

14 Further, do not concern yourself with what was said at
15 sidebar conferences or during any discussions with counsel.
16 Those discussions related to rulings of law.

17 At times, I may have admonished a witness or directed
18 a witness to be responsive to questions or to keep his or her
19 voices up. At times, I may have asked a question myself. Any
20 questions that I asked or instructions I gave were intended
21 only to clarify the presentation of the evidence and to bring
22 out something that I thought might be unclear. You should draw
23 no inference or conclusion of any kind, favorable or
24 unfavorable, with respect to any witness or any party in the
25 case by reason of any comment, or question, or instruction of

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1 mine. Nor should you infer that I have any views to the
2 credibility of any witness, as to the weight of the evidence,
3 or as to how you should decide any issue that's before you.
4 That is entirely your role.

5 You have had the opportunity to observe the witnesses.
6 It will now be your job to decide how believable each witness
7 was in his or her testimony. You are the sole judges of the
8 credibility of each witness and of the importance of his or her
9 testimony.

10 To that end, I'm going to give you a few general
11 instructions on how you may determine whether witnesses are
12 credible and reliable, whether witnesses told the truth at this
13 trial, and whether they knew what they were talking about. It
14 is really just a matter of using your common sense, your good
15 judgment, and your experience.

16 First, consider how well the witness was able to
17 observe or hear what he or she testified about. The witness
18 may be honest, but mistaken. How did the witness' testimony
19 impress you? Did the witness appear to be testifying honestly
20 and/or candidly? Were the witness' answer direct or were they
21 evasive? Consider the witness' intelligence, demeanor, manner
22 of testifying, and the strength and accuracy of the witness'
23 recollection. Consider whether any outside factors might have
24 affected a witness' ability to perceive events.

25 Consider the substance of the testimony. How did the

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1 witness' testimony compare with other proof in the case? Is it
2 corroborated, or is it contradicted by other evidence? If
3 there is a conflict, does any version appear reliable, and, if
4 so, which version seems more reliable?

5 You may consider whether a witness had any possible
6 bias or relationship with a party or any possible interest in
7 the outcome of the case. Such a bias or relationship does not
8 necessarily make the witness unworthy of belief. These are
9 simply factors that you may consider.

10 In passing upon the credibility of a witness, you may
11 also take into account any inconsistencies or contradictions as
12 to material matters in his or her testimony.

13 In summary, you should carefully scrutinize all of the
14 testimony of each witness, the circumstances under which each
15 witness testified, the impression the witness made when
16 testifying, the relationship of the witness to the controversy
17 and the parties, the witness' bias or impartiality, the
18 reasonableness of the witness' statement, the strength or
19 weakness of the witness' recollection viewed in light of all
20 the other testimony, and any other matter in evidence that may
21 help you decide the truth and the importance of each witness'
22 testimony.

23 If a witness has shown knowingly or willfully to have
24 testified falsely concerning any material matter, or to have
25 previously committed perjury, you have a right to distrust such

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1 witness' testimony in other particulars and give it such
2 credibility as you think it deserves.

3 It is for you, the jury, and you alone -- not the
4 lawyers, not the witnesses, and not me as the judge -- to
5 decide the credibility of witnesses who testified and the
6 weight that their testimony deserves. The ultimate question
7 for you to decide in passing upon credibility is: Did the
8 witness tell the truth before you?

9 The defendant did not testify in this case. Under our
10 Constitution, a defendant has no obligation to testify or to
11 present any evidence because it is the government's burden to
12 prove the defendant guilty beyond a reasonable doubt. That
13 burden remains with the government throughout the entire trial
14 and never shifts to the defendant. The defendant is never
15 required to prove that he or she is innocent. You may not
16 attach any significance to the fact that the defendant did not
17 testify. No adverse inference against the defendant may be
18 drawn because he did not take the witness stand. You may not
19 consider this against the defendant in any way in your
20 deliberations in the jury room.

21 You have heard from witnesses who testified that they
22 were involved in criminal conduct and/or that they were
23 involved in the conduct charged in the indictment. They have
24 entered into nonprosecution agreements with the government.
25 Those witnesses are Ciara Edwards, Keisha Hood, and Tina

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1 Seabrooks, also known as Chicago. You have heard a great deal
2 in counsel's summations about these so-called accomplice or
3 cooperating witnesses and whether or not you should believe
4 them.

5 Experience will tell you that the government
6 frequently must rely on the testimony of cooperating witnesses
7 and other witnesses who have admitted participating in crimes.
8 The government must take its witnesses as it finds them and
9 frequently must use such testimony in a criminal prosecution
10 because otherwise it would be difficult or impossible to detect
11 and prosecute wrongdoers.

12 The testimony of such cooperating witnesses is
13 properly considered by the jury. If cooperating witnesses
14 could not be used, there would be many cases in which there was
15 real guilt, and conviction should be had, but in which
16 convictions would be unobtainable.

17 For these very reasons, the law allows the use of
18 cooperating witness testimony. Indeed, it is the law in
19 federal courts that the testimony of a single cooperating
20 witness may be enough in itself for conviction if the jury
21 believes that the testimony established guilt beyond a
22 reasonable doubt. At the same time, the jury is free to
23 discount the testimony of a cooperating witness in part or in
24 its entirety if it disbelieves the cooperating witness
25 testimony.

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1 Because of the possible interest a cooperating witness
2 may have in testifying, the cooperating witness' testimony
3 should be scrutinized with care and caution. The fact that a
4 witness is cooperating -- is a cooperating witness can be
5 considered by you as bearing upon her credibility. It does not
6 follow, however, that simply because a person has admitted to
7 participating in one or more crimes, that she is incapable of
8 giving truthful testimony.

9 Like the testimony of any other witness, cooperating
10 witness testimony should be given the weight that it deserves
11 in light of the facts and circumstances before you, taking into
12 account the witness' demeanor, candor, the strength, and
13 accuracy of a witness' recollection, her background, and the
14 extent to which the testimony is or is not corroborated by
15 other evidence in the case.

16 You heard testimony about agreements between the
17 government and the witnesses, Ms. Edwards, Ms. Hood, and
18 Ms. Seabrooks, also known as Chicago. I must caution you that
19 it is no concern of yours why the government made an agreement
20 with a particular witness. Your sole concern is whether a
21 witness has given truthful testimony here in the courtroom
22 before you.

23 In evaluating the testimony of a cooperating witness,
24 you should ask yourselves whether this cooperating witness
25 would benefit more by lying or by telling the truth. Was the

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1 witness' testimony made up in any way because she believed or
2 hoped to somehow receive favorable treatment by testifying
3 falsely? Or did the witness believe that her interests would
4 be best served by testifying truthfully? If you believe that
5 the witness was motivated by hopes of personal gain, was the
6 motivation one that would cause the witness to lie, or it was
7 one that would cause the witness to tell the truth? Did this
8 motivation color her testimony?

9 If you find that the testimony was false, you should
10 reject it. If, however, after a cautious and careful
11 examination of the cooperating witness' testimony and demeanor
12 upon the witness stand, if you are satisfied that the witness
13 told the truth, you should accept it as credible and act upon
14 it accordingly.

15 Your sole concern is to decide whether the witness was
16 giving truthful testimony in this case before you. In sum, you
17 should look at all the evidence in deciding what credence and
18 what weight, if any, you will give to a witness' testimony.

19 As I have previously instructed you, the issue of
20 credibility need not be decided in an all-or-nothing fashion.
21 Even if you find that a witness testified falsely in one part,
22 you may still accept her testimony in other parts, or may
23 disregard all of it. Credibility is a determination entirely
24 for you, the jury.

25 You have heard testimony from what we call expert

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1 witnesses. Specifically, Detective Colleen Horan was an expert
2 in microscopic analysis of ballistics evidence, Detective Paul
3 Jeselson was an expert in the Bloods gang, Special Agent
4 Tenitris McInnis was an expert in ammunition identification,
5 and Daphne Mavris and Ashley Chapman were experts in controlled
6 substance analysis.

7 An expert is a witness who, by education or
8 experience, has acquired learning or experience in a
9 specialized area of knowledge. Such witnesses are permitted to
10 give their opinions as to relevant matters in which they
11 profess to be an expert and give their reasons for their
12 opinions. Expert testimony is presented to you on the theory
13 that someone who's experienced in the field can assist you in
14 understanding the evidence or in reaching an independent
15 decision on the facts.

16 Now, your role in judging credibility applies to
17 experts as well as other witnesses. You should consider the
18 expert opinions that were received in evidence in this case and
19 give them as much or as little weight as you think they
20 deserve. If you should decide that the opinion of an expert
21 was not based on sufficient education, or experience, or on
22 sufficient data, or if you should conclude that the
23 trustworthiness or credibility of an expert is questionable for
24 any reason, or if the opinion of the expert was outweighed in
25 your judgment by other evidence in the case, then you might

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1 disregard the opinion of the expert entirely or in part.

2 On the other hand, if you find the opinion of an
3 expert is based on sufficient data, education, and experience,
4 and the other evidence does not give you reason to doubt his or
5 her conclusions, you would be justified in placing reliance on
6 his or her testimony.

7 You have heard the testimony of law enforcement
8 witnesses and other government employees. The fact that a
9 witness may be employed by the federal government or a state or
10 city government as a law enforcement agent or employee does not
11 mean that his or her testimony is deserving of more or less
12 consideration or greater or lesser weight than that of an
13 ordinary witness.

14 In this context, defense counsel is allowed to try to
15 attack the credibility of such a witness on the ground that his
16 or her testimony may be colored by a personal or professional
17 interest in the outcome of the case.

18 It is your decision, after reviewing all the evidence,
19 whether to accept the testimony of the law enforcement or
20 government employee witness and to give to that testimony the
21 weight you find it deserves.

22 In deciding whether to believe a witness, you should
23 specifically note any evidence of hostility or affection that
24 the witness may have towards one of the parties. Likewise, you
25 should consider evidence of any other interest or motive that

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1 the witness may have in cooperating with a particular party.
2 You should also take into account any evidence of any benefit
3 that a witness may receive from the outcome of the case.

4 It is your duty to consider whether the witness has
5 permitted any such bias or interest to color his or her
6 testimony. In short, if you find that a witness is biased, you
7 should view his or her testimony with caution, weigh it with
8 care, and subject it to close and searching scrutiny.

9 Of course, the mere fact that a witness is interested
10 in the outcome of the case does not mean he or she has not told
11 the truth. It is for you to decide from your observations, and
12 by applying your common sense and experience, and all the other
13 considerations mentioned whether the possible interest of any
14 witness has intentionally or otherwise colored or distorted his
15 or her testimony. You are not required to disbelieve an
16 interested witness. You may accept as much of his or her
17 testimony as you deem reliable and reject as much as you deem
18 unworthy of acceptance.

19 During the trial, you heard the names of several other
20 individuals mentioned in connection with this case. Some of
21 those other individuals have been mentioned in connection with
22 what the government alleges was illegal activity.

23 I instruct you that you may not draw any inference,
24 favorable or unfavorable, toward the government or the
25 defendant from the fact that there may be people who have not

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1 been tried as defendants in this case. Further, you may not
2 speculate as to the reasons why those other people are not on
3 trial or what became of them in the legal system. Those
4 matters are wholly outside your concern and have no bearing on
5 your duties as jurors in this case.

6 You have heard evidence during the trial that
7 witnesses have discussed the facts of the case and their
8 testimony with the lawyers before the witnesses appeared in
9 court. Although you may consider that fact when you're
10 evaluating a witness' credibility, I should tell you that there
11 is nothing unusual or improper about a witness meeting with
12 lawyers before testifying, so that the witness can be aware of
13 the subjects he or she will be questioned about, focus on those
14 subjects, and have the opportunity to review relevant exhibits
15 before being questioned about them. Such consultation helps
16 conserve your time and the Court's time. In fact, it would be
17 unusual for a lawyer to call a witness without such
18 consultation.

19 Again, the weight you give to the fact or the nature
20 of a witness' preparation for his or her testimony and what
21 inferences you draw from such preparation are matters
22 completely within your discretion.

23 There are several people whose names you have heard
24 during the course of the trial, but who did not appear here to
25 testify. I instruct you that each party had an equal

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1 opportunity or lack of opportunity to call any of these
2 witnesses. Therefore, you should not draw any inference or
3 reach any conclusions as to what they would have testified to
4 had they been called. Their absence should not affect your
5 judgment in any way.

6 You should, however, remember my instruction that the
7 law does not impose on a defendant in a criminal case the
8 burden or duty of calling any witness or producing any
9 evidence. The burden remains with the government to prove the
10 guilt of the defendant beyond a reasonable doubt.

11 There has been evidence that the defendant made
12 statements to law enforcement authorities or other
13 investigators. Evidence of these statements was properly
14 admitted in this case and may be properly considered by you.
15 You are to give the statements such weight as you feel they
16 deserve in light of all the evidence.

17 Whether you approve or disapprove of the use of these
18 statements may not enter into your deliberations. I instruct
19 you that the statements were both made and obtained in a lawful
20 manner, and that no one's rights were violated, and the
21 government's use of the evidence is entirely lawful.

22 You have heard testimony that defendant made
23 statements in which the defendant claimed that his conduct was
24 consistent with innocence and not with guilt. The government
25 claims that these statements in which the defendant exculpated

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1 himself are false.

2 If you find the defendant gave a false statement in
3 order to divert suspicion from himself, you may infer that the
4 defendant believed that he was guilty. You may not, however,
5 infer on the basis of this alone that the defendant is, in
6 fact, guilty of the crimes for which the defendant was charged.

7 Whether or not the evidence as to a defendant's
8 statements shows that the defendant believed that he was
9 guilty, and the significance, if any, to be attached to any
10 such evidence are matters for you, the jury, to decide.

11 You have heard reference in the arguments and
12 cross-examination of defense counsel in this case to the fact
13 that certain investigative techniques were or were not used by
14 the government. There's no legal requirement, however, that
15 the government prove its case through any particular means.
16 While you are to carefully consider the evidence adduced by the
17 government, you are not to speculate as to why they used the
18 techniques they did or why they did not use other techniques.
19 The government is not on trial. Law enforcement techniques are
20 not your concern. However, you are free to consider a lack of
21 evidence in your determination of whether the government proved
22 the charged crimes beyond a reasonable doubt. Your concern is
23 to determine whether, on the evidence or lack of evidence, the
24 defendant's guilt has been proven beyond a reasonable doubt.

25 You have also heard testimony about evidence seized in

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1 certain searches. Evidence obtained from these searches was
2 properly admitted in this case and may properly be considered
3 by you. Whether you approve or disapprove of how it was
4 obtained should not enter into your deliberations because I now
5 instruct you that the government's use of this evidence is
6 entirely lawful.

7 You must, therefore, regardless of your personal
8 opinions, give this evidence full consideration along with all
9 the other evidence in the case in determining whether the
10 government has proved the defendant's guilt beyond a reasonable
11 doubt.

12 Some of the exhibits that were admitted into evidence
13 were in the form of charts or summaries. I decided to admit
14 these charts and summaries in place of, or in addition to, the
15 underlying documents that they represent in order to save time
16 and avoid unnecessary inconvenience. You should consider these
17 charts and summaries as you would any other evidence.

18 Video or audio recordings of certain conversations
19 have been admitted into evidence. Whether you approve or
20 disapprove of the recording of these conversations may not
21 enter into your deliberations. I instruct you that these
22 recordings were made in a lawful manner, and that no one's
23 rights were violated, and that the government's use of this
24 evidence is lawful, and it was properly admitted into evidence
25 at this trial.

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1 You must, therefore, regardless of any personal
2 opinions, give this evidence consideration along with all the
3 other evidence in the case in determining whether the
4 government has proved the defendant's guilt beyond a reasonable
5 doubt.

6 In addition, the government has been permitted to hand
7 out transcripts of certain of the recordings. These
8 transcripts, which the government prepared, were given to you
9 as an aid or guide to assist you in listening to the
10 recordings. However, the transcripts are not, in and of
11 themselves, evidence. Therefore, when the tapes were played, I
12 advised you to listen very carefully to the tapes themselves.
13 You alone should make your own interpretation of what appears
14 on the tapes based on what you heard. If you think you heard
15 something differently from what appeared on the transcript,
16 then what you heard is controlling.

17 If you wish to hear any of the recordings again, or
18 see any of the transcripts of those recordings, they will be
19 made available to you during your deliberations.

20 Among the exhibits received in evidence, there are
21 some documents and recordings that were redacted. Redacted
22 means that part of the document or recording was taken out.
23 You are to concern yourself only with the part of the item that
24 has been admitted into evidence. You should not consider any
25 possible reason why the other part has been redacted.

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Charge

1 Now I'm going to turn to the substantive instructions.

2 Let us first turn to the charges against the defendant
3 as contained in the indictment. The indictment, as I said
4 earlier, is not evidence. It is an accusation, a statement of
5 the charges made against the defendant. It gives the defendant
6 notice of the charges against him. It informs the Court and
7 the public of the nature of the accusation.

8 A defendant begins trial with an absolutely clean
9 slate and without any evidence against him. Remember that the
10 charges in the indictment are merely accusations. What matters
11 is the evidence that you heard and saw in the trial.

12 The indictment consists of six charges, or counts.
13 Each count is a separate crime or offense. Each count must,
14 therefore, be considered separately by you, and you must return
15 a separate verdict of guilty or not guilty on each count.
16 Whether you find the defendant guilty or not guilty as to one
17 count should not affect your verdict as to any other count
18 charged.

19 Counts One, Two, and Three charge that on or about
20 October 20, 2017, the defendant committed violent crimes in aid
21 of racketeering.

22 Count One charges that on or about October 20, 2017,
23 the defendant willfully caused and aided and abetted the
24 attempted murder of Isaac Toribio, also known as Ike, in the
25 vicinity of East 196th Street and Morris Avenue in the Bronx

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Charge

1 for the purpose of gaining entrance to and maintaining and
2 increasing his position in the Bloods.

3 Count Two charges that, on or about October 20, 2017,
4 the defendant conspired with others to murder Isaac Toribio,
5 also known as Ike, for the purpose of gaining entrance to and
6 maintaining and increasing position in the Bloods.

7 Count Three charges that, on or about October 20,
8 2017, the defendant willfully caused and aided and abetted an
9 assault with a dangerous weapon of multiple people in the
10 vicinity of East 196th Street and Morris Avenue in the Bronx
11 for the purpose of gaining entrance to and maintaining and
12 increasing position in the Bloods.

13 Count Four charges that, on or about October 20, 2017,
14 during and in relation to the attempted murder charged in Count
15 One and the assault with a dangerous weapon charged in Count
16 Three, that the defendant willfully caused and aided and
17 abetted the knowing use and carrying of a firearm, and in
18 furtherance of such crimes, possession of a firearm, which was
19 brandished and discharged.

20 Count Five charges that, on or about October 20, 2017,
21 the defendant, after having previously been convicted of a
22 crime -- convicted in a court of a crime punishable by a term
23 of imprisonment exceeding one year, knowingly did possess, or
24 willfully caused another person to possess, ammunition in and
25 affecting commerce and aided and abetted the same.

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Charge

1 Count Six charges that, from at least in or about
2 May 2016 up to January 26, 2018, the defendant intentionally
3 and knowingly distributed, or possessed with the intent to
4 distribute, 28 grams or more of mixtures and substances
5 containing a detectable amount of cocaine base in a form
6 commonly known as crack, and willfully caused and aided and
7 abetted the same.

8 Before I march on to the charges in the indictment, I
9 want to instruct you now on two different ways that you may
10 find the defendant guilty of the crimes charged in Counts One,
11 Three, Four, or Six; that is, all the charges except for Count
12 Two, which charges conspiracy to commit murder in aid of
13 racketeering, even if the defendant himself did not physically
14 commit those crimes.

15 First, you may find that the defendant -- sorry.
16 First, you may find the defendant guilty of those crimes on an
17 aiding and abetting theory of liability. Second, you may also
18 find the defendant guilty of those crimes if he willfully
19 caused someone else to commit those crimes.

20 Either one of these two different theories of
21 liability would be sufficient to convict the defendant on
22 Counts One, Three, Four, five, or Six even if the defendant
23 himself did not physically commit those crimes.

24 First, I will explain "aiding and abetting," and then
25 I will explain what it means to "willfully cause" a crime.

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Charge

1 Aiding and abetting liability is its own theory of
2 criminal liability. In effect, it is a theory of liability
3 that permits a person to be convicted of a specific crime if
4 the person, while not himself physically committing the crime,
5 assisted another person or persons in committing the crime.

6 The federal aiding and abetting statute, Section 2(a)
7 of Title 18 of the United States Code, provides that: "Whoever
8 commits an offense against the United States or aids, abets,
9 counsels, commands, induces, or procures its commission, is
10 punishable as a principal."

11 You should give these words -- aids, abets, counsels,
12 demands, induces, or procures -- their ordinary meaning. A
13 person aids or abets a crime if he knowingly does some act for
14 the purpose of aiding or encouraging the commission of that
15 crime with the intention of causing the crime to be committed.
16 To counsel means to give advice or recommend. To induce means
17 to lead or move by persuasion or influence as to some action or
18 state of mind. To procure means to bring about by unscrupulous
19 or indirect means. To cause means to bring something about, to
20 effect something.

21 In other words, it is not necessary for the government
22 to show that a person physically committed a crime in order for
23 him to be held legally responsible for that crime. You may
24 find that the defendant committed the substantive crime if you
25 find that the government has proven beyond a reasonable doubt

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Charge

1 that another person actually committed the crime and that the
2 defendant aided and abetted that person in the commission of
3 the offense.

4 As you can see, the first requirement is that another
5 person has committed the crime charged. Obviously, no one can
6 be convicted of aiding and abetting the criminal acts of
7 another if no crime was committed by the other person. But if
8 you do find that a crime was committed, then you must consider
9 whether the defendant aided or abetted the commission of the
10 crime.

11 To aid and abet another to commit a crime, it is
12 necessary that the individual willfully and knowingly
13 associated himself in some way with the crime, and that the
14 individual willfully and knowingly sought by some act to help
15 make the crime succeed. Participation in a crime is willful if
16 action is taken voluntarily and intentionally.

17 The mere presence of a person where a crime is being
18 committed, even coupled with knowledge by that person that a
19 crime is being committed, or the mere acquiescence by a person
20 in the criminal conduct of others, even with guilty knowledge,
21 is not sufficient to establish aiding and abetting. An aider
22 and abettor must have some interest in the criminal venture,
23 and must know that the crime is being committed, and must act
24 in a way that is intended to bring about the success of the
25 criminal venture by taking some action to assist or encourage

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Charge

1 the commission of the crime. In addition, aiding the
2 perpetrators only after the criminal objective has been
3 entirely accomplished, without any intent to bring about the
4 crime before it was entirely accomplished, is insufficient to
5 establish that the defendant was guilty of aiding and abetting.

6 To determine whether the defendant aided and abetted
7 the commission of the crimes charged in Counts One, Three,
8 Four, Five, or Six, ask yourself these questions:

9 Did the defendant participate in the crime charged as
10 something he wished to bring about?

11 Did the defendant associate himself with the criminal
12 venture knowingly and willfully?

13 Did the defendant seek, by his actions, to make the
14 criminal venture succeed?

15 If so, then the defendant is an aider and abettor and,
16 therefore, guilty of the offense charged in that count.

17 Another way that a defendant can be found guilty of
18 the crimes charged in Counts One, Three, Four, Five, or Six is
19 by willfully causing someone else to commit the crime. Section
20 2(b) of the aiding and abetting statute, which relates to
21 willfully causing a crime, reads as follows:

22 "Whoever willfully causes an act to be done which if
23 directly performed by him or another would be an offense
24 against the United States shall be guilty of a federal crime."

25 So what does the term willfully caused mean? It means

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Charge

1 that it is not necessary for the defendant himself to have
2 physically committed the crime.

3 To determine whether the defendant willfully caused
4 the commission of the crime, ask yourself these questions:
5 First, did the defendant intentionally take action that caused
6 someone else to commit an act that would have been a crime if
7 the defendant himself had committed the act?

8 Second, did the defendant intend that the crime would
9 actually be committed by someone else?

10 If the answer to both of these questions is yes, then
11 the defendant is guilty just as if the defendant himself had
12 physically committed the crime.

13 To summarize, you may find the defendant guilty of
14 Counts One, Three, Four, Five, or Six -- that is all the counts
15 except Two, Count Two -- if you find that the government has
16 proven beyond a reasonable doubt that either: (1) the
17 defendant physically committed the crime; or (2) the defendant
18 aided and abetted someone else in the commission of a crime; or
19 (3) the defendant willfully caused someone else to commit these
20 crimes. If you do not find that the defendant has proven
21 beyond a reasonable doubt that any of those three -- if you do
22 not find that the government has proven beyond a reasonable
23 doubt any of those three, then you must find the defendant not
24 guilty.

25 Depending on your view of the evidence, there could be

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1 a subtle distinction with respect to whether the defendant
2 caused somebody else to commit a crime or whether he aided and
3 abetted someone else in committing a crime.

4 If that question should come up in your deliberations,
5 you should think of it in terms of the difference between
6 causing someone to do something as opposed to facilitating or
7 helping someone do it. If you are persuaded beyond a
8 reasonable doubt that the defendant willfully caused someone
9 else to commit the crimes charged in Counts One, Three, Four,
10 Five, or Six, you must find him guilty as someone who wilfully
11 caused the commission of the crime.

12 If, on the other hand, you are persuaded beyond a
13 reasonable doubt that the defendant, with the knowledge and
14 intent that I described earlier, sought by his actions to
15 facilitate or assist another person in committing the crime,
16 then he is guilty as an aider and abettor.

17 Now, Counts One, Two, and Three charge the defendant
18 with committing violent crimes in aid of racketeering.

19 Count One charges the defendant with willfully causing
20 and aiding and abetting an attempted murder in aid of
21 racketeering.

22 Count Two charges the defendant with conspiracy to
23 commit murder in aid of racketeering.

24 Count Three charges the defendant with willfully
25 causing and aiding and abetting an assault with a dangerous

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Charge

1 weapon in aid of racketeering.

2 All three of these charges are in violation of Section
3 1959 of Title 18 of the U.S. Code, which provides in relevant
4 part as follows:

5 "Whoever . . . for the purpose of gaining entrance to
6 or maintaining or increasing position in an enterprise engaged
7 in racketeering activity, murders . . . or assaults with a
8 dangerous weapon . . . in violation of the laws of any state or
9 the United States, or attempts or conspires to do so, is guilty
10 of a crime."

11 With respect to Counts One, Two, and Three, in order
12 for you to find the defendant guilty, the government must prove
13 beyond a reasonable doubt that each of the following -- must
14 prove beyond a reasonable doubt each of the following elements:

15 First, that an enterprise existed;

16 Second, that the enterprise engaged in a racketeering
17 activity or activities;

18 Third, that the enterprise engaged in or its
19 activities affected interstate or foreign commerce -- let me
20 read that again -- third, that the enterprise engaged in or its
21 activities affected interstate or foreign commerce;

22 Fourth, that the defendant committed the violent crime
23 alleged, which in Count One is willfully causing or aiding and
24 abetting attempted murder, in Count Two is conspiracy to commit
25 murder, and in Count Three is willfully causing or aiding and

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Charge

1 abetting assault with a dangerous weapon;

2 Fifth, that the defendant's general purpose in doing
3 so was to gain entrance to the enterprise or maintain or
4 increase his position in the enterprise.

5 I will now instruct you on the law applicable to each
6 of those elements that I just mentioned.

7 The first element the government must prove beyond a
8 reasonable doubt with respect to Counts One, Two, and Three is
9 that the enterprise alleged, the Bloods, existed.

10 Under the racketeering statute, the term "enterprise"
11 includes any legal entity, such as a partnership, corporation,
12 or association, or a group of individuals who are associated in
13 fact, although not a legal entity. The enterprise does not
14 have to have a particular name or, for that matter, have any
15 name at all. Nor must it be registered or licensed as an
16 enterprise. It does not have to be commonly recognized -- a
17 commonly recognized legal entity, such as a corporation, a
18 trade union, partnership, or the like.

19 An enterprise may be a group of people informally
20 associated together for a common purpose of engaging in a
21 course of conduct. This group may be organized for a
22 legitimate and lawful purpose or it may be organized for an
23 unlawful purpose. In addition to having a common purpose, this
24 group of people must have a core of personnel who function as a
25 continuing unit.

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Charge

1 If the government proves beyond a reasonable doubt
2 that there was a group of people characterized by a common
3 purpose or purposes, an ongoing formal or informal organization
4 or structure, and core personnel who functioned as a continuing
5 unit during a substantial period, then an enterprise existed.

6 (Continued on next page)

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Jury Charge

1 The second element that the Government must prove
2 beyond a reasonable doubt with respect to Counts One, Two, and
3 Three is that the enterprise alleged, the Bloods, engaged in
4 racketeering activity. The Government alleges that the Bloods
5 engaged in the following forms of racketeering activity:

6 Attempted murder and conspiracy to commit murder, in
7 violation of New York law; and Dealing in controlled
8 substances, including the distribution of heroin, crack
9 cocaine, and marijuana, the possession of heroin, crack
10 cocaine, and marijuana with intent to distribute, and
11 conspiracy to so distribute or possess, in violation of federal
12 law.

13 The Government is not required to prove beyond a
14 reasonable doubt that the enterprise engaged in all of these
15 forms of racketeering activity. To satisfy the second element
16 of Counts One, Two, and Three, it is sufficient for the
17 Government to prove beyond a reasonable doubt that the
18 enterprise engaged in only one form of the alleged forms of
19 racketeering activity.

20 As I just explained, the Government alleges with
21 respect to Counts One, Two, and Three that among the
22 racketeering activities that the enterprise engaged in were
23 attempted murder and conspiracy to murder, in violation of New
24 York State law. I will describe those crimes now.

25 Attempted Murder I will now describe the law

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Jury Charge

1 pertaining to attempted murder.

2 Under New York law, "a person is guilty of an attempt
3 to commit a crime when, with intent to commit a crime, he
4 engages in conduct which tends to effect the commission of such
5 crime." Mere preparation is not sufficient to find that a crime
6 was attempted. The acts committed by the person, or those he
7 is aiding and abetting, must be those acts which are required
8 to carry the project forward within "dangerous proximity" of
9 the criminal end to be attained.

10 There are two elements to the crime of murder under
11 New York State law:

12 First, that an individual caused the death of the
13 victim, or aided and abetted the same;

14 and Second, that the individual did so with the intent
15 to cause the death of the victim or another person.

16 There are three elements to the crime of conspiracy to
17 commit murder under New York State law.

18 First, that the individual agreed with one or more
19 other persons to engage in or cause the performance of a
20 murder;

21 Second, that the individual did so with the intent
22 that such murder be performed;

23 and Third, that the individual, or one of the people
24 with whom he agreed to engage in or cause the performance of
25 the murder, committed an overt act in furtherance of the

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Jury Charge

1 conspiracy. A person can be found guilty of conspiracy to
2 commit murder even if the murder that is the object of the
3 conspiracy does not happen. The term "intent" under New York
4 conspiracy law has its own special meaning. "Intent" means
5 conscious objective or purpose. Thus, a person acts with the
6 intent that a murder be performed when his conscious objective
7 or purpose is that the murder should occur.

8 The Government must also prove that one of the
9 conspirators committed an overt act in furtherance of the
10 conspiracy. The agreement to engage in or cause the
11 performance of a crime is not itself an overt act. The overt
12 act must be an independent act that tends to carry out the
13 conspiracy. The overt act can be, but need not be, the
14 commission of the crime that was the object of the conspiracy.

15 Under New York law, a person may be guilty of
16 conspiracy even though one or more or all of the other parties
17 to the agreement are not guilty of conspiracy or the murder. I
18 instruct you that the term "racketeering activity," for
19 purposes of the second element of Counts One, Two, and Three,
20 includes attempted murder and conspiracy to commit murder in
21 violation of New York law as I have just described those
22 crimes.

23 As I mentioned, the Government alleges that another
24 form of racketeering activity that the Bloods engaged in was
25 dealing in controlled substances, including the distribution of

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Jury Charge

1 heroin, crack cocaine, and marijuana, possession of heroin,
2 crack cocaine, and marijuana with intent to distribute, and
3 conspiracy to so distribute or possess, in violation of federal
4 law. I will describe those crimes now. To enable you to
5 consider whether the enterprise engaged in these forms of
6 racketeering activity for purposes of Counts One, Two, and
7 Three, I need to define some terms for you.

8 "Distribution" means the actual, constructive or
9 attempted transfer of a controlled substance from one person to
10 another. To distribute simply means to deliver, to pass over,
11 to hand over something to another person, or to cause it to be
12 delivered, passed on, or handed over to another. Distribution
13 does not require a sale. "Possession with Intent to
14 Distribute" The phrase "possession with intent to distribute"
15 has two components: the "possession" of a controlled substance
16 and the "intent"—that is, the state of mind or purpose—to
17 distribute a controlled substance to another person or persons.
18 The legal concept of possession may differ from the everyday
19 usage of the term, so I will explain it in a little more
20 detail. Actual possession is what most of us think of as
21 possession—that is, having physical custody or control of an
22 object. However, a person need not have actual, physical
23 possession, that is, physical custody of an object, in order to
24 be in legal possession of it. If an individual has the ability
25 to exercise substantial control over an object that he or she

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1 does not have in his or her physical custody, and the intent to
2 exercise such control, then he or she is in possession of that
3 article. This is called constructive possession. Control over
4 an object may be demonstrated by the existence of a working
5 relationship between the person having such control and the
6 person with actual physical custody. The person having control
7 over an object possesses it because he or she has an effective
8 working relationship with the person who has actual physical
9 custody of it, and because the person having control can direct
10 the movement, transfer or disposition of the object. More than
11 one person may exercise control of the same controlled
12 substances. The law recognizes that possession may be sole or
13 joint. If one person alone has actual or constructive
14 possession of a thing, possession is sole. If more than one
15 person has possession of it, as I have defined possession for
16 you, then possession is joint. That is what is meant by
17 "possession." The phrase "intent to distribute" means a state
18 of mind or purpose to transfer a controlled substance to
19 another person. Since no one can read another person's mind,
20 the determination as to a person's intent is inferred from his
21 or her behavior. Basically, the question with regard to the
22 intent aspect of the underlying offense is whether any drugs in
23 the possession of any co-conspirator, that is, subject to his
24 or her control in the manner I have indicated, were or would
25 have been for his or her personal use, or instead were or would

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Jury Charge

1 have been for the purpose of distribution or delivery to
2 another. Often it is possible to make the determination as to
3 whether drugs were possessed "with intent to distribute" from
4 the quantity of drugs that a person may have possessed.
5 Possession of a large quantity of drugs may mean that the
6 person possessing them intended to distribute them.
7 Furthermore, a person may have intended to distribute a
8 controlled substance even if he or she did not possess a large
9 amount of it. Other physical evidence, such as paraphernalia
10 for the packaging and processing of drugs, can show an intent
11 to distribute. There might be evidence also of a plan or a
12 scheme to distribute. You should make your decision whether
13 there was an intent to distribute any drugs in the possession
14 of the defendant or any co-conspirator from all of the evidence
15 presented. Conspiracy A "conspiracy" is a kind of criminal
16 partnership—a combination or agreement of two or more persons
17 to join together to accomplish some unlawful purpose. For
18 purposes of drug-trafficking conduct that constitutes
19 "racketeering activity" for the second element of Counts One,
20 Two, and Three, please keep in mind that a conspiracy to
21 violate a federal law is a separate and distinct offense from
22 the actual violation of any such law, which is the so-called
23 "substantive crime." Guilt of a conspiracy does not depend on
24 the ultimate success of the conspiracy. In other words, the
25 accomplishment of the unlawful purpose or actual commission of

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Jury Charge

1 the substantive crime that was the object or goal of the
2 conspiracy is not required. Congress has deemed it appropriate
3 to make conspiracy standing alone a separate crime, even if the
4 conspiracy to commit the underlying substantive crime was not
5 successful. Of course, if someone participates in a conspiracy
6 and the crime or crimes which were the object of the conspiracy
7 were in fact committed, that person may be guilty of both the
8 conspiracy and the substantive crime. The point simply is that
9 the crime or crimes that were the objective of the conspiracy
10 need not have been actually committed for a conspiracy to
11 exist. A conspiracy has sometimes been called a partnership
12 for criminal purposes in which each partner becomes the agent
13 of every other partner. To establish the existence of a
14 conspiracy the Government is not required to show that two or
15 more people sat around a table and entered into a formal
16 contract. Indeed, it would be extraordinary if there were such
17 a formal document or specific agreement. From its very nature
18 a conspiracy is almost always characterized by secrecy and
19 concealment. It is sufficient if two or more persons, in any
20 manner, whether they say so directly or not, come to a common
21 understanding to violate the law. Express language or specific
22 words are not required to indicate agreement to or membership
23 in a conspiracy. It is not necessary that a conspiracy
24 actually succeed in its purpose for you to conclude that it
25 existed. If a conspiracy exists, even if it should fail in its

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Jury Charge

1 purpose, it is still a crime. In determining whether there has
2 been an unlawful agreement, you may judge the acts and conduct
3 of the alleged members of the conspiracy that are done to carry
4 out an apparent criminal purpose. The saying "actions speak
5 louder than words" is applicable here. Often, the only
6 evidence that is available with respect to the existence of a
7 conspiracy is that of what may initially appear to be
8 disconnected acts on the part of the alleged individual
9 coconspirators. Different conspirators may undertake different
10 acts at different times. So, you must first determine whether
11 or not the proof established beyond a reasonable doubt the
12 existence of a conspiracy. In considering this, you should
13 consider all the evidence that has been admitted with respect
14 to the conduct and statements of each alleged coconspirator (or
15 any lack of evidence), and any inferences that may reasonably
16 be drawn from that conduct and those statements. If, upon
17 consideration of all the evidence, direct and circumstantial,
18 you find beyond a reasonable doubt that the minds of two or
19 more of the conspirators met (we call this sometimes "a meeting
20 of the minds")—that is, that they agreed, as I have explained a
21 conspiratorial agreement to you, to work together in
22 furtherance of an unlawful scheme—then proof of the existence
23 of the conspiracy is established. If you find that a drug
24 dealing conspiracy existed with respect to the second element
25 of Counts One, Two, and Three, that is the racketeering

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Jury Charge

1 activity, you must then determine whether the persons alleged
2 to be involved intentionally and knowingly became members of
3 that conspiracy. You must determine not only whether a person
4 participated in the conspiracy, but also whether he did so
5 intentionally and knowingly—that is, did he participate in the
6 conspiracy with knowledge of its unlawful purpose and with the
7 specific intention of furthering the objective of that
8 conspiracy. Knowledge is a matter of inference from facts
9 proved. A person acts “intentionally” and “knowingly” if he
10 acts purposely and deliberately and not because of mistake or
11 accident, mere negligence, or other innocent reason. That is,
12 the acts must be the product of the person’s conscious
13 objective. If you find that a conspiracy existed and that the
14 person you are considering participated knowingly and
15 intentionally in it, the extent of the person’s participation
16 has no bearing on whether or not he is guilty. In addition,
17 the duration and extent of a person’s participation has no
18 bearing on the issue of guilt. A person need not have joined
19 the conspiracy at the outset. A person may have joined the
20 conspiracy at any time in its progress, and that person will be
21 held responsible for all that was done before he joined and all
22 that was done during the conspiracy’s existence while he was a
23 member. Each member of a conspiracy may perform separate and
24 distinct acts. Some conspirators play major roles, while
25 others play minor roles in the scheme. An equal role is not

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Jury Charge

1 what the law requires. In fact, even a single act may be
2 sufficient to draw a person within the scope of the conspiracy.
3 Of course, mere association with a conspirator or mere presence
4 at a place where a conspiracy is ongoing does not make someone
5 a member of the conspiracy. Nor is knowledge without
6 participation sufficient. What is necessary is that the person
7 you are considering participated with knowledge of the unlawful
8 objective of the conspiracy and with intent to aid in the
9 accomplishment of that objective. Ultimately, the question is
10 this: Has the Government proven beyond a reasonable doubt that
11 the Defendant joined the conspiracy and knowingly and
12 intentionally participated in it with the awareness of its
13 basic purpose and as something he wished to bring about?

14 I instruct you that the term "racketeering activity"
15 includes the distribution of heroin, crack cocaine, or
16 marijuana, and the possession with intent to distribute of
17 heroin, crack cocaine, or marijuana, and conspiracy to so
18 distribute or possess, in violation of federal law as I have
19 just described those offenses to you. The term "racketeering
20 activity" also includes, as I mentioned earlier, acts involving
21 attempted murder and conspiracy to commit murder, in violation
22 of New York law as I described those offenses to you. It is
23 for you to determine whether the enterprise engaged in the
24 racketeering activities alleged in the second element of Counts
25 One, Two, and Three. You should give the words "engaged in"

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Jury Charge

1 their ordinary, everyday meaning. It may be established that an
2 enterprise "engaged in" racketeering activity by evidence that
3 individual members committed racketeering activity for the
4 group or in concert with other members, or acted in ways that
5 contributed to or furthered the purposes of the group, or that
6 were facilitated or made possible by the group. For an
7 enterprise to be engaged in racketeering activity, it is enough
8 to show that the enterprise committed or was planning to commit
9 some racketeering activity within a period of time short enough
10 under the circumstances so that it is appropriate to say that
11 the enterprise was engaged in racketeering activity. As I
12 mentioned earlier, the Government is not required to prove
13 beyond a reasonable doubt that the enterprise engaged in all of
14 these forms of racketeering activity. To satisfy the second
15 element of Counts One, Two, or Three, it is sufficient for the
16 Government to prove beyond a reasonable doubt that the
17 enterprise engaged in only one form of the alleged forms of
18 racketeering activity.

19 The third element that the Government must prove
20 beyond a reasonable doubt with respect to Counts One, Two, and
21 Three is that racketeering activity or activities the
22 enterprise engaged in affected interstate or foreign commerce.
23 Interstate and foreign commerce includes the movement of goods,
24 services, money and individuals between states or between
25 states and the District of Columbia or a U.S. Territory or

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Jury Charge

1 possession and between the United States and a foreign state or
2 nation. Any effect on interstate or foreign commerce need only
3 have been minimal. You need not find that the enterprise was
4 engaged in interstate or foreign commerce. Nor is it necessary
5 to find that the effect on interstate or foreign commerce has
6 been adverse to commerce. All that is necessary is that the
7 enterprise or a proven racketeering act through which the
8 affairs of the enterprise were conducted affected interstate or
9 foreign commerce in some minimal way. The commerce affected or
10 potentially affected need not be lawful. Activities affecting
11 or potentially affecting unlawful interstate activity such as
12 drug dealing and trafficking fall within the purview of the
13 statute. Indeed, with respect to narcotics in particular,
14 Congress has determined that all narcotics activity, even
15 purely local narcotics activity, has a substantial effect on
16 interstate commerce. This element is also satisfied if you
17 find beyond a reasonable doubt that one or more of the
18 racketeering activities of the enterprise included the use of
19 ammunition that traveled in interstate commerce, travel by
20 members of the enterprise between states, or their use of
21 telephones. In addition, if you find that the Bloods engaged
22 in the types of narcotics-related racketeering activities that
23 I described to you, then this element is satisfied.

24 Count One charges the Defendant with willfully causing
25 and aiding and abetting the attempted murder of Isaac Toribio,

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1 a/k/a "Ike".

2 Count Two charges the Defendant with conspiracy to
3 murder Isaac Toribio, a/k/a "Ike".

4 Count Three charges the Defendant with willfully
5 causing and aiding and abetting assault with a dangerous
6 weapon.

7 I have previously defined for you the content and
8 elements of the laws which define attempted murder and
9 conspiracy to commit murder in the state of New York. I
10 instruct you to follow those definitions here to determine if
11 the Government has satisfied its burden as to the fourth
12 element of Count One—whether the Defendant attempted to murder
13 Isaac Toribio, a/k/a "Ike". And the fourth element of Count
14 Two, whether the Defendant conspired to murder Isaac Toribio,
15 a/k/a "Ike".

16 I will now describe the law pertaining to assault with
17 a dangerous weapon as it relates to the fourth element of Count
18 Three. Under New York law, a person is guilty of a crime when
19 "with intent to cause physical injury to another person, he
20 causes such injury to such person or to a third person by means
21 of a deadly weapon or a dangerous instrument." The crime of
22 assault with a dangerous weapon under New York State law has
23 two elements:

24 First, the Defendant caused, or aided and abetted the
25 causation of, physical injury to someone by means of a deadly

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1 weapon or dangerous instrument;

2 and Second, the Defendant did so with the intent to
3 cause physical injury to that person or another person.

4 It is not required that the person who is injured be
5 the same person who was intended to be injured.

6 Here, "physical injury" means impairment of physical
7 condition or substantial pain.

8 "Deadly weapon" includes any loaded weapon from which
9 a shot, readily capable of producing death or other serious
10 physical injury, may be discharged.

11 As I have said, the Defendant is charged with
12 willfully causing and with aiding and abetting the attempted
13 murder of Isaac Toribio, a/k/a "Ike". He is charged in Count
14 Three with willfully causing and with aiding and abetting
15 assault with a dangerous weapon. As to each of those Counts, I
16 instruct you that the Government must prove beyond a reasonable
17 doubt that the Defendant willfully caused or aided and abetted
18 these offenses. The Government is not required to prove that
19 the Defendant both willfully caused and aided and abetted these
20 offenses.

21 The last element that the Government must prove beyond
22 a reasonable doubt with respect to Counts One, Two and Three is
23 that the Defendant acted for the purpose of gaining entrance
24 to, maintaining a position in, or increasing a position in the
25 Bloods. To establish that the Defendant acted for the purpose

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1 of gaining entrance to or maintaining or increasing his
2 position in the Bloods, the government must prove beyond a
3 reasonable doubt that a general purpose of the Defendant, with
4 respect to Count One and Count Three, in willfully causing or
5 aiding and abetting someone else to commit the alleged crimes,
6 and in Count Two, in committing the alleged crime, was to gain
7 entrance to, increase, or maintain his own position in the
8 Bloods. The motive requirement is satisfied if the Defendant
9 acted because it would allow him to gain entrance to the
10 enterprise, because he knew it was expected of him by reason of
11 his association with the enterprise, because it would enhance
12 his own position within the enterprise, or, with respect to a
13 high-ranking member of the enterprise, because he committed or
14 sanctioned the crimes to protect the enterprise's operations or
15 to advance the objectives of the enterprise.

16 These examples, however, are by way of illustration
17 and are not exhaustive. Maintaining or increasing his own
18 position need not have been the Defendant's only or primary
19 motive in committing the alleged crimes in order for him to be
20 guilty of Counts One, Two, or Three. The Government must only
21 prove beyond a reasonable doubt that maintaining or increasing
22 his own position in the enterprise was a substantial motivating
23 factor in the Defendant's decision to participate in these
24 crimes. Alternatively, I want to remind you that you may find
25 the Defendant guilty of Counts One or Three on an aiding and

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1 abetting theory of liability or a willful causing theory of
2 liability. Under either of these two theories of liability,
3 the Government must prove beyond a reasonable doubt that
4 Defendant aided and abetted, or willfully caused DeJesus to
5 commit the alleged crimes knowing that DeJesus acted for the
6 purpose of gaining entrance to, maintaining a position in, or
7 increasing a position in the Bloods. My earlier instructions
8 to you on the element of purpose or motive equally apply when
9 you are assessing DeJesus's purpose.

10 I will now turn to the firearms offense charged in
11 Count Four of the Indictment and instruct you on the elements
12 of that offense.

13 Count Four alleges a violation of Section 924(c) of
14 the Federal Criminal Code. That provision makes it a crime for
15 any person, "during and in relation to any crime of violence...
16 to use or carry a firearm," or, "in furtherance of any such
17 crime, to possess a firearm."

18 Count Four charges the Defendant with willfully
19 causing and aiding and abetting someone else's knowing use,
20 carrying, and possession of a firearm during and in relation to
21 the attempted murder charged in Count One and the assault with
22 a dangerous weapon charged in Count Three. So Count Four, by
23 its terms, is connected to Counts One and Three in the
24 Indictment. This means that you cannot consider Count Four
25 unless you determine that the defendant is guilty of Count One,

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1 Count Three, or both Count One and Count Three.

2 In order to convict the Defendant of the firearms
3 offense in Count Four, the Government must prove the following
4 elements beyond a reasonable doubt:

5 First, the Defendant willfully caused or aided and
6 abetted someone else's use, carrying, or possession of a
7 firearm, or any combination of those acts.

8 Second, that the Defendant willfully caused or aided
9 and abetted someone else's use or carrying of the firearm
10 during and in relation to one of the crimes of violence charged
11 in Count One or Count Three, or willfully caused or aided and
12 abetted someone else's possession of a firearm in furtherance
13 of one of the crimes of violence charged in Count One or Count
14 Three;

15 and, Third, that the Defendant acted knowingly. In
16 addition, in order to sustain its burden of proof on an aiding
17 and abetting theory with respect to Count Four, the Government
18 must establish (1) that the Defendant actively participated in
19 the underlying crime of violence, here, the attempted murder
20 charged in Count One or the assault with a dangerous weapon
21 charged in Count Three, and (2) that the Defendant did so with
22 advance knowledge that another participant in the crime of
23 violence would use or carry a firearm, or possess a firearm in
24 furtherance of that crime of violence. Advance knowledge means
25 knowledge at a time the Defendant can attempt to alter the plan

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1 or withdraw from it. Knowledge of the gun may, but does not
2 have to, exist before the underlying crime is begun. It is
3 sufficient if the knowledge is gained in the middle of the
4 underlying crime so long as the Defendant continues to
5 participate in the crime and has a realistic opportunity to
6 withdraw from it. You may, but not need not, infer that the
7 Defendant has sufficient knowledge if you find that the
8 Defendant continued his participation in the crime after
9 learning about the use, carrying or possession of a gun by a
10 confederate.

11 Finally, if you find that the Government has satisfied
12 its burden as to each of those elements, then you must also
13 determine whether the Government has proved that the Defendant
14 willfully cause or abetted and abetted the brandishing of the
15 firearm, and whether the Government has proved that the weapon
16 was discharged. I will instruct you further about brandishing
17 and discharge in a few minutes.

18 The first element the Government must prove beyond a
19 reasonable doubt for Count Four is that the Defendant willfully
20 caused or aided and abetted the use or carrying or possession
21 of a firearm. The Government does not need to prove all three.

22 "Firearm", A firearm is commonly known as a gun. It
23 is defined as "any weapon... which will or is designed to or
24 may readily be converted to expel a projectile by the action of
25 an explosive." In considering the specific element of whether

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1 the defendant willfully caused or aided and abetted the use,
2 carrying, or possession of a firearm, it does not matter
3 whether the firearm was loaded or operable at the time of the
4 crime.

5 "Use", With respect to the use of a firearm, the
6 Government must prove beyond a reasonable doubt that the
7 Defendant willfully caused or aided and abetted another
8 person's active employment of the firearm during and in
9 relation to the commission of a crime of violence. Actually
10 firing or attempting to fire a firearm would constitute use of
11 the firearm.

12 "Carry", With respect to the carrying of a firearm,
13 the Government must prove beyond a reasonable doubt that the
14 Defendant willfully caused or aided and abetted someone to
15 maintain the weapon within his control so that it was available
16 in such a way that it furthered the commission of the crime.
17 That person need not have held the firearm physically, that is,
18 have had actual possession of it on his person. If you find
19 that person had dominion and control over the place where the
20 firearm was located, and had the power and intention to
21 exercise control over the firearm, and that the firearm was
22 immediately available to him in such a way that it furthered
23 the commission of the crime of violence, you may find that the
24 Government has proven that the defendant willfully caused or
25 aided and abetted the carrying of the weapon.

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1 “Possess”, possession of a firearm in furtherance of a
2 crime requires that the Defendant willfully caused or aided and
3 abetted another person’s possession of a firearm and that the
4 possession advance or move forward the crime. The mere
5 presence of a firearm is not enough. Possession in furtherance
6 requires that the possession be incident to and an essential
7 part of the crime. The firearm must have played some part in
8 furthering the crime in order for this element to be satisfied.
9 You should also apply the instructions I gave you earlier about
10 the legal concepts relating to possession, such as physical and
11 “constructive possession,” and sole and joint possession.

12 The second element that the Government must prove
13 beyond a reasonable doubt with respect to Count Four is that
14 the Defendant willfully caused or aided and abetted either
15 another person’s use or carrying of a firearm during and in
16 relation to a crime of violence, or possession of a firearm in
17 furtherance of such a crime. Possession in furtherance, as I
18 indicated, requires that the possession be incident to and an
19 essential part of the crime. The firearm must have played some
20 part in furthering the crime in order for this element to be
21 satisfied. Mere possession of a firearm is not sufficient. I
22 instruct you that the attempted murder charged in Count One and
23 the assault with a dangerous weapon charged in Count Three
24 qualify as crimes of violence.

25 The final element the Government must prove beyond a

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1 reasonable doubt on the firearms count alleged in Count Four is
2 that the Defendant knew that the person he willfully caused or
3 aided and abetted was using, carrying, or possessing a firearm,
4 and that the Defendant acted knowingly in doing so.

5 To satisfy this element, you must find that the
6 Defendant had knowledge that what he, or the other person, was
7 carrying or using was a firearm. An act is done knowingly if
8 it is done purposefully and voluntarily as opposed to
9 mistakenly or accidentally. In order for the Government to
10 satisfy this element, it must prove that the Defendant knew
11 what he was doing, for example, that he knew that he was
12 willfully causing or aiding and abetting the possession or
13 carrying of a firearm in the commission of a crime of violence
14 by another. It is not necessary, however, for the Government
15 to prove that the Defendant knew that he was violating any
16 particular law.

17 If you find the Defendant guilty on Count Four, you
18 must then make two special findings:

19 First, whether the Government has proven beyond a
20 reasonable doubt that the Defendant willfully caused or aided
21 and abetted another person in "brandishing" the firearm; and
22 second, whether the Government has proven beyond a reasonable
23 doubt that the firearm was discharged. To "brandish" a firearm
24 means to display all or part of the firearm, or to otherwise
25 make the presence of the firearm known to another person, in

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1 order to intimidate that person, regardless of whether the
2 firearm is directly visible to that other person. With respect
3 to the issue of "brandishing," the Defendant is guilty of
4 aiding and abetting the brandishing of a firearm if he had
5 advance knowledge that another participant in the attempted
6 murder in Count One, or the assault with a dangerous weapon
7 alleged in Count Three, or both, would display the firearm or
8 make the presence of the firearm known for purposes of
9 intimidation. The term "discharge" means to fire or shoot,
10 whether intentionally or accidentally. To willfully cause or
11 aid and abet the possession or carrying of a firearm that was
12 discharged, the defendant need not have advance knowledge that
13 the discharge would occur. With respect to the issue of
14 "discharge," the Defendant is guilty of willfully causing or
15 aiding and abetting the discharge of a firearm if you find that
16 the Government has proved beyond a reasonable doubt (1) that
17 the defendant willfully caused or aided and abetted the
18 firearms offense in Count Four by another, and (2) the firearm
19 in question was in fact discharged.

20 I will now turn to the ammunition offense charged in
21 Count Five of the Indictment and instruct you on the elements
22 of that offense.

23 The relevant statute for Count Five is Title 18,
24 United States Code, Section 922(g)(1). Title 18, United States
25 Code, Section 922(g)(1) provides, in relevant part, that it is

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1 a crime for a person:

2 "who has been convicted in any court of a crime
3 punishable by imprisonment for a term exceeding one year,...
4 to... possess in or affecting commerce, any... ammunition...."
5 Count Five of the Indictment charges that, on or about October
6 20, 2017, the Defendant, after having been convicted in a court
7 of a crime punishable by imprisonment for a term exceeding one
8 year, knowingly did possess or willfully caused another person
9 to knowingly possess, or aid and abetted another in the
10 possession of, ammunition, specifically, five.40 caliber S&W
11 bullets, which previously had been shipped and transported in
12 interstate and foreign commerce. In enacting this criminal
13 statute, Congress was of the view that the ease with which
14 persons, including those with certain prior convictions, were
15 able to acquire firearms and ammunition was a significant
16 factor in the prevalence of violent crime in the United States,
17 and that federal control over gun dealers and the restriction
18 of the distribution of firearms and ammunition would be helpful
19 to state and local authorities in addressing this problem.
20 Accordingly, Congress passed a series of laws designed to give
21 support to federal, state and local law enforcement officials
22 in combating crime and violence.

23 In general, these laws include provisions which
24 prohibit certain categories of people from possessing or
25 receiving firearms and ammunition which were shipped in

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1 interstate or foreign commerce. The Government contends that
2 the Defendant is within the class of people prohibited from
3 possessing any firearm or ammunition shipped in interstate
4 commerce because he previously had been convicted of a crime
5 punishable by more than a year imprisonment. In your role as
6 jurors, you are not to be concerned with the wisdom or the
7 policy of these laws. Your verdict must be based on the
8 evidence in this case. Your verdict may not be based on your
9 personal approval or disapproval of the firearm and ammunition
10 laws passed by Congress.

11 In order to sustain its burden of proof on Count Five,
12 the Government must prove each of the following three elements
13 beyond a reasonable doubt:

14 First, that the Defendant previously was convicted of
15 a crime punishable by imprisonment for a term exceeding one
16 year;

17 Second, the Defendant knowingly possessed ammunition,
18 or willfully caused another person to knowingly possess
19 ammunition, or aided and abetted another person's knowing
20 possession of ammunition;

21 and Third, that the possession of the ammunition was
22 in or affecting interstate or foreign commerce.

23 The first element the Government must prove beyond a
24 reasonable doubt is that the Defendant had been convicted of a
25 crime punishable by imprisonment for a term exceeding one year

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1 in a court of the United States or any State prior to the date
2 he is charged with possessing ammunition, or causing another
3 person to possess ammunition, or aiding and abetting such
4 possession. In this regard, you have heard evidence in the
5 form of a stipulation, or agreement by both sides, that the
6 defendant was convicted in state court of a crime punishable by
7 imprisonment for a term exceeding one year. It has also been
8 stipulated that this conviction occurred prior to the time that
9 the Defendant is alleged to have possessed the ammunition as
10 charged in the Indictment. As such, you must treat the first
11 element of Count Five as having been proved beyond a reasonable
12 doubt.

13 With respect to Count Five, I instruct you that the
14 prior conviction that is an element of the offense is only to
15 be considered by you for the fact that it exists and nothing
16 else. You are not to consider it for any other purpose on
17 Count Five. You may not consider the prior conviction in
18 deciding whether the Defendant knowingly possessed the
19 ammunition, or willfully caused another person to knowingly
20 possess the ammunition, or aided and abetted another person's
21 knowing possession of the ammunition as charged in Count Five
22 of the Indictment.

23 With respect to Count Five, the second element that
24 the Government must prove beyond a reasonable doubt is that the
25 Defendant knowingly possessed ammunition, or willfully caused

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1 another person to knowingly possess ammunition, or aided and
2 abetted another person's knowing possession of ammunition.
3 Under the statute on which this charge is based, the term
4 "ammunition" means "ammunition or cartridge cases, primers,
5 bullets, or propellant powder designed for use in any firearm."

6 You should apply to your consideration of Count Five
7 the instructions I have already given you about the meaning of
8 "knowingly" and "possession," including physical and
9 "constructive possession" and sole and joint possession, as
10 well as my instructions regarding willfully causing the
11 commission of a crime and aiding and abetting the commission of
12 a crime.

13 The third element that the Government must prove
14 beyond a reasonable doubt is that the possession of the
15 ammunition was in or affecting interstate or foreign commerce.
16 This means that the Government must prove that at some time
17 before the Defendant possessed, or willfully caused someone
18 else to possess the ammunition, or aided and abetted someone
19 else's possession of the ammunition, the ammunition had
20 traveled in interstate or foreign commerce. In this regard, it
21 is sufficient for the Government to satisfy this element by
22 proving that, at some point before the charged possession of
23 ammunition, the ammunition moved over a state line or the
24 United States border. The Government does not have to prove
25 that the Defendant himself carried the ammunition across a

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1 state line or the United States border, nor must the Government
2 prove who carried it across or how it was transported. It is
3 also not necessary for the Government to prove that the
4 Defendant knew that the ammunition had previously crossed a
5 state or national border.

6 I will now turn to the narcotics offense charged in
7 Count Six of the Indictment and instruct you on the elements of
8 that offense. The Defendant is charged with violating the Drug
9 Abuse Prevention and Control Act. That law makes it a crime, in
10 relevant part, "for any person knowingly or intentionally to ...
11 distribute... or possess with intent to ... distribute...a controlled
12 substance."

13 Count Six charges that, from at least in or about May
14 2016 to on or about January 26, 2018, the Defendant
15 intentionally and knowingly distributed a controlled substance,
16 and willfully caused, and aided and abetted the same. The
17 controlled substance alleged is 28 grams or more of cocaine
18 base in a form commonly known as "crack."

19 The Government must prove each of the following
20 elements beyond a reasonable doubt:

21 First, during the period alleged in the Indictment,
22 the Defendant either distributed a controlled substance, or
23 possessed a controlled substance with the intent to distribute
24 it;

25 Second, the Defendant did so knowingly;

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1 and Third, the substance involved was in fact a
2 controlled substance.

3 The first element that the Government must prove
4 beyond a reasonable doubt with respect to Count Six is either
5 the "distribution" or "possession with intent to distribute" of
6 a controlled substance. With respect to the this first
7 element, the Government need prove only that the Defendant
8 distributed the controlled substance, or that he possessed the
9 controlled substance with the intent to distribute it, or that
10 he willfully caused or aided and abetted another in the
11 distribution or possession with intent to distribute a
12 controlled substance. You should apply in your consideration
13 of Count Six the previous instructions I have given you about
14 "distribution" and "possession with intent to distribute" when
15 I was discussing these terms in connection with the definition
16 of "racketeering activity" for purposes of Counts One, Two, and
17 Three.

18 The second element that the Government must prove
19 beyond a reasonable doubt with respect to Count Six is that the
20 Defendant acted knowingly. To establish this element, the
21 government must prove that the Defendant knew that he
22 distributed, or possessed with intent to distribute, a
23 controlled substance. The Government does not have to prove
24 that the Defendant knew the exact nature of the controlled
25 substance that he distributed, or that he possessed with intent

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1 to distribute. It is enough that the Government proves that
2 the Defendant knew that he possessed some kind of controlled
3 substance.

4 The third element that the Government must prove
5 beyond a reasonable doubt with respect to Count Six is that the
6 substance involved was, in fact, a controlled substance. I
7 instruct you that cocaine base or "crack" is a controlled
8 substance.

9 If you find that the Government has satisfied its
10 burden as to Count Six, then you are asked to make a special
11 finding as to quantity. You do not need to determine the
12 precise quantity of drugs involved. Rather, you need only
13 decide whether the Defendant distributed or possessed with
14 intent to distribute 28 grams or more of crack cocaine. Your
15 determination on drug quantity must be unanimous and beyond a
16 reasonable doubt. You will be given a verdict sheet on which
17 to record the jury's answer to this question.

18 Now, in addition to dealing with the elements of each
19 of the offenses, you must also consider the issue of venue as
20 to each offense, namely, whether any act in furtherance of the
21 unlawful activity occurred within the Southern District of New
22 York. The Southern District of New York includes Manhattan,
23 the Bronx, as well as several other counties, so anything that
24 occurs in Manhattan occurs in the Southern District of New
25 York. It is sufficient to satisfy the venue requirement if any

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1 act by anyone in furtherance of the crime charged occurred
2 within the Southern District of New York. The act need not be
3 a criminal act. The act need not be taken by the Defendant, as
4 long as the act is caused by the conduct of the Defendant or is
5 reasonably foreseeable. To satisfy this venue requirement
6 only, the Government need not meet the burden of proof beyond a
7 reasonable doubt. The Government meets its burden of proof for
8 venue if it establishes by a preponderance of the evidence that
9 an act in furtherance of the crime occurred within the Southern
10 District of New York.

11 A preponderance of the evidence means that something
12 is more likely than not. If you find that the Government has
13 failed to prove this venue requirement as to any of the Counts
14 in the Indictment, then you must acquit the defendant on that
15 count.

16 You will note that each count in the Indictment
17 alleges that certain acts occurred on or about various dates.
18 Unless I have specifically instructed you otherwise, it does
19 not matter if the evidence you heard at trial indicates that a
20 particular act occurred on a different date from what is
21 charged in the Indictment. The law requires that the
22 Government prove a substantial similarity between the dates
23 alleged in the Indictment and the dates established by the
24 evidence.

25 You will now retire to decide the case. Your function

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1 is to weigh the evidence in this case and to determine the
2 guilt or lack of guilt of the Defendant with respect to the
3 charges in the Indictment. You must base your verdict solely
4 on the evidence and these instructions as to the law, and you
5 are obliged on your oath as jurors to follow the law as I
6 instruct you, whether you agree or disagree with the particular
7 law in question. Your verdict must be unanimous. This means
8 that each and every one of you must agree upon your verdict.
9 Each juror is entitled to his or her opinion, but you are
10 required to exchange views with your fellow jurors. This is
11 the very essence of jury deliberation. It is your duty to
12 consult with one another and to deliberate with a view to
13 reaching an agreement. If you start with one point of view,
14 but after reasoning with other jurors it appears that your own
15 judgment is open to question, then of course you should not
16 hesitate in yielding your original point of view if you are
17 convinced that the opposite point of view is one that truly
18 satisfies your judgment and conscience. But you are not to
19 surrender a view of the case that you conscientiously believe,
20 merely because you are outnumbered or because other jurors
21 appear firmly committed to their views. You should vote with
22 the others only if you are convinced on the evidence, the
23 facts, and the law that it is the correct way to decide the
24 case.

25 In sum, you, the jury, must deliberate as a body, but

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1 each of you, as an individual juror, must discuss and weigh
2 your opinions dispassionately, and adopt that conclusion which
3 in your good conscience appears to be in accordance with the
4 truth. No juror should surrender his or her conscientious
5 beliefs solely for the purpose of returning a unanimous
6 verdict. I instruct you that you are not to discuss the case
7 unless all jurors are present. Four or five or ten jurors
8 together are only a gathering of individuals. Only when all
9 jurors are present do you constitute a jury and only then may
10 you deliberate.

11 Remember at all times, you are not partisans. You are
12 judges, judges of the facts. Your sole interest is impartially
13 to assess the evidence to determine whether the Government has
14 met its burden of proving guilt beyond a reasonable doubt as to
15 each of the charges. If you are divided, do not report how the
16 vote stands. Simply state in you note that you are divided.
17 If you have reached a verdict, do not report what it is until
18 you are asked in open court. Simply inform me that you have
19 reached a verdict.

20 You are about to go into the jury room and begin your
21 deliberations. The exhibits that were received into evidence
22 will be provided to you in the jury room. If you want any of
23 the testimony to review, you may also request that. Please
24 remember that it is not always easy to locate what you might
25 want, so be as specific as you possibly can in requesting

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1 exhibits or portions of the testimony. If you want any further
2 explanation of the law as I have explained it to you, you may
3 also request that. Your requests for exhibits or testimony --
4 in fact any communications with the Court -- should be made to
5 me in writing, signed by your foreperson, and given to the
6 Marshal or the deputy clerk. In any event, do not tell me or
7 anyone else how the jury stands on any issue until there is a
8 unanimous verdict.

9 If you took notes during the trial, those notes are
10 only an aid to recollection. They are not evidence, nor are
11 they a substitute for your recollection of the evidence in the
12 case. Your notes are not entitled to any greater weight than
13 your actual recollection or the impression of each juror as to
14 what the evidence actually is. I emphasize that if you took
15 notes, you should not show your notes to any other juror during
16 your deliberations. They are only for yourself. If you did
17 not take notes during the trial, you should not be influenced
18 by the notes of another juror, but instead you should rely upon
19 your own recollection of the evidence. The fact that a
20 particular juror has taken notes does not entitle that juror's
21 views to any greater weight.

22 I have prepared a verdict form for you to use in
23 recording your decision. Please use that form to report your
24 verdict. The verdict form does not represent either evidence
25 or instructions on the law.

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1 At the beginning of deliberations, you must choose a
2 foreperson. The foreperson does not have any more power or
3 authority than any other juror, and his or her vote or opinion
4 does not count for any more than any other juror's vote or
5 opinion. The foreperson is merely your spokesperson to the
6 Court. He or she will send out any notes, and when the jury
7 has reached a verdict, he or she will notify the Marshal that
8 the jury has reached a verdict, and you will come into open
9 court and give the verdict.

10 After you have reached a unanimous verdict, your
11 foreperson will fill-in the form that has been given to you,
12 sign and date it, and advise the marshal outside your door that
13 you are ready to return to the courtroom.

14 I will stress that each of you must be in agreement
15 with the verdict that is announced in Court. Once your verdict
16 is announced in open court and officially recorded, it cannot
17 ordinarily be revoked.

18 You are reminded that you took an oath to render
19 judgment impartially and fairly, without prejudice or sympathy,
20 solely upon the evidence in the case and the applicable law. I
21 am sure that if you follow your oath, listen to the views of
22 your fellow jurors, and apply your own common sense, you will
23 reach a fair verdict here. Remember that your verdict must be
24 rendered without fear, without favor, and without prejudice or
25 sympathy.

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1 Members of the jury, this concludes my instructions to
2 you. I will ask you to remain seated while I confer with the
3 attorneys to see if there are any additional instructions that
4 they would like to have me give to you or anything I may not
5 have covered in my previous statement.

6 MR. RODRIGUEZ: Nothing from the government.

7 MR. KAYE: No, your Honor.

8 THE COURT: Before you retire into the jury room I
9 must inform you that the law provides for a jury of twelve
10 people in this case. Therefore, two people, juror numbers 29
11 and 38, the two people seated in 13 and 14 are alternates.

12 You both will be allowed to leave the courthouse
13 during deliberations, but you are not yet excused as jurors in
14 the case. You will not be present for deliberations at least
15 initially. In the event that one of the non-alternate jurors
16 can no longer deliberate -- we have your contact information --
17 you will be recalled to continue your service, so I am
18 releasing you for now but I am not excusing you from jury
19 service yet. For now, though, you may leave. You have been
20 very attentive and very patient. I am sorry that you will in
21 all likelihood miss the experience of deliberating with the
22 jury but the law provides for a jury of twelve people in this
23 case.

24 Before the rest of the jury retires to the jury room,
25 if you have any clothing or objects there, you are asked to

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Jury Charge

1 pick them up and to withdraw before any deliberations start.
2 Please do not discuss the case with anyone over the next few
3 days. If you would like to be advised of the outcome of the
4 trial, please make sure that Mr. Hampton has a phone number at
5 which you can be reached.

6 THE COURT: I am releasing you for now.

7 (Alternates released)

8 THE COURT: Ladies and gentlemen, I want to thank you
9 for your patience in those instructions. As I said, there will
10 be, all of the exhibits after you go back to begin your
11 deliberations will be sent back with you. That will include
12 the video and other materials which will be on a laptop that
13 has only admitted evidence on it. So you'll be able to view
14 any of those videos or audio recordings. I will also bring
15 back a copy of the instructions, 12 copies of the instructions
16 in case you want to refer to any of the instructions which were
17 quite detailed and one copy of the verdict form that will be
18 come back to you. You'll have notepaper to send out any notes.

19 At some point when you begin deliberations, your first
20 note ordinarily will be who has been chosen as the foreperson.
21 When you send out a note it should be addressed to me, Judge
22 Oetken. It can just say "judge" and it should just be signed
23 by the foreperson, which can just be the juror number.

24 At this point I'd like to ask Mr. Hampton to swear-in
25 the marshal.

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Jury Charge

1 (Marshal sworn)

2 THE COURT: Thank you, ladies and gentlemen. You may
3 now begin your deliberations and you can now take your pads
4 back.

5 (jury deliberations)

6 THE COURT: You may be seated.

7 If you folks would please let Mr. Hampton know where
8 you are. Generally we'd like you to stay on the floor or at
9 least in the building and the very least please make sure he
10 has cellphone numbers in case there's a note we can gather
11 everybody quickly.

12 MR. KAYE: Is there an extra copy of the verdict
13 sheet?

14 THE COURT: We'll get one. We'll bring down a few
15 copies.

16 All right. We'll be in touch.

17 (Deliberations)

18 (Continued on next page)

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(In open court; jury not present)

THE COURT: Okay. We have received two notes from the jury.

First, let me say: Court Exhibit No. 1 is the copy of the charge, paper copy, of which we gave 12 copies to the jurors. That's been marked as Court Exhibit No. 1.

The first note from the jury has been marked as Court Exhibit No. 2. It's from 4:38 p.m. It just says: "Judge, Juror 44 is the foreperson." That's the person sitting in seat number 10.

And then the second note, which has been marked as Court Exhibit No. 3, from 5:30 today, is a little longer: "The jury would like to break for the day. We have the following questions for our deliberation tomorrow:

"(1) What time can we arrive tomorrow morning?

"(2) The computer is not working. Can we get another working computer?

"(3) Can we get a monitor to view the evidence on a larger screen?

"(4) Can we have some highlighters?

"(5) We have some questions about the laws explained, specifically related to the definition of racketeering. Who can clarify this for us?

"Thank you." Signed Juror No. 44.

MR. KAYE: I'm sorry, Judge, what was the first thing

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1 they asked for?

2 THE COURT: No. (1) was: "What time can we arrive
3 tomorrow morning?"

4 (2) was: "The computer is not working. Can we get
5 another working computer?"

6 And (3): "Can we get a monitor to view the evidence
7 on a larger screen?"

8 So I propose bringing them out and telling them I'll
9 address the questions in the morning, have them come back at
10 9:30.

11 MR. RODRIGUEZ: Judge, I guess the only question is
12 whether there's something we should do with respect to the
13 legal question that we can help them with now, if there's any
14 clarity we can give the jury so we can assist them with that.

15 THE COURT: The problem is, they said they have
16 questions but they don't really say what the questions are.
17 And since they said they want to go now, they said they would
18 like to break for the day, I don't know there's any point
19 getting into that now, because that would require them
20 conferring and being more specific, I think. I can tell them
21 that I'm happy to answer any questions, but we might as well
22 deal with that tomorrow, I think.

23 MR. KAYE: Also, when they leave for the day, I would
24 have no objection to maybe one of the assistants or Ms. Parisi
25 trying to figure out why they can't get the computer working.

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1 Is it the government's laptop that they're having a
2 problem with?

3 THE COURT: Yes. It was a clean laptop from the
4 government.

5 MR. RODRIGUEZ: It is. We'll take a look at the
6 laptop and see either if we can get that laptop working or a
7 different laptop working. I don't know if we'll have the
8 ability to get a bigger monitor beyond just the laptop that we
9 have. I don't know if there's any technology available in the
10 jury room.

11 THE COURT: There's nothing in there. I'll have to
12 think about that one. I've never done anything beyond a laptop
13 before.

14 So, in any event, I think, rather than get into it,
15 since they say they would like to go for the night, I think
16 I'll just tell them: "Thank you. We'll address your questions
17 in the morning. Please come back at 9:30." I think I'm going
18 to tell them they can't deliberate until they're all here.

19 Do you all have a preference as to whether, once the
20 twelfth one arrives, I bring them all out, I tell them to
21 start? Or the other thing I've done sometimes is, I say: When
22 the twelfth person arrives, you can send out a note saying, we
23 are all here, we're now deliberating. I've done it both ways.

24 MR. RODRIGUEZ: Your Honor, the government thinks the
25 note process, that confirms that they're all here and

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1 deliberating, makes sense.

2 MR. KAYE: Agreed.

3 THE COURT: Okay.

4 So I'll bring them out and get them started. I mean,
5 send them home and tell them to come back.

6 MR. RODRIGUEZ: Very good.

7 (Jury present)

8 THE COURT: You may be seated.

9 Good evening, ladies and gentlemen.

10 JURY MEMBERS: Good evening.

11 THE COURT: I have your notes.

12 Just to be clear on the record: I did receive the
13 note from 4:38 p.m., saying, "Juror No. 44 is the foreperson."
14 Thank you for that.

15 And then I received an additional note, from a few
16 minutes ago, 5:30, saying: "The jury would like to break for
17 the day. We have the following questions:

18 "What time should we arrive?

19 "The computer is not working. Can we get another
20 working computer? We'll look into that and see what we can do.

21 And: "(3) Can we get a monitor to view the evidence
22 on a larger screen?" I'll have to look into that and see if
23 that's possible. It may be we can only have a laptop but I'll
24 look into that.

25 "(4) Can we have some highlighters?" That's

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1 something we can do. I have 12 highlighters for you, which
2 you'll have in there tomorrow morning.

3 "(5) We have some questions about the law as
4 explained, specifically as related to the definition of
5 racketeering. Who can clarify this for us?"

6 I'll address this in the morning as well as any other
7 questions you have. Generally, any questions you have, about
8 the law after reviewing what I have already instructed on the
9 law, you can submit in a note, and I will do my best to address
10 it. So I'll follow up with more detail tomorrow, but since I'm
11 letting you all go now, tonight, I'm just going to say, why
12 don't you all come back at 9:30 tomorrow morning. Okay?

13 So let's do the same thing: We'll have some breakfast
14 for you in the morning around 9:15, so if you can shoot around
15 9:15, that would be great.

16 There are a couple things I want to emphasize once
17 again:

18 One is: I think you heard me say when I was
19 instructing you that when there are nine or ten or eleven of
20 you, you're just a group of nice people, you're not a jury yet.
21 It's only when all 12 of you are present that you can begin
22 deliberating. So when you're coming in, please don't discuss
23 the evidence or talk about the trial. Don't deliberate until
24 all 12 of you are present. It's only when all 12 of you are
25 present that you constitute the jury.

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1 So what we can do is: When you're arriving in the
2 morning, when the 12th person arrives, I'll ask the foreperson
3 to send out a note saying: "All of the jurors are present, and
4 we have begun deliberating." At that point, you can begin
5 deliberating but only when all 12 of you are present, and you
6 can send a note to that effect.

7 The other matters we will work on and try to address
8 tonight. So when you come back tomorrow morning -- by 9:30,
9 hopefully -- and are deliberating, you'll hopefully have a
10 working computer, at the very least.

11 Beyond that, the only other thing I want to emphasize
12 is that you are not deliberating when you leave. You're only
13 deliberating when all of you are there in the jury room. So
14 please don't do any research on the case, don't discuss the
15 case with anyone else, including each other, when you're not in
16 the jury room with all 12 jurors. All right?

17 So thank you, all, for your patience and for your
18 attention. And we'll see you tomorrow morning by 9:30.

19 Have a good night, everybody.

20 JUROR: Good night.

21 (Jury not present)

22 THE COURT: So you all will take a look at the laptop.
23 Maybe it's just that they weren't able to turn it on or
24 something. I don't know if there's something like that. If
25 not, you'll find another clean laptop with the same exhibits?

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1 MR. RODRIGUEZ: Yes, your Honor. We would just ask:
2 Obviously, the government doesn't want to go anywhere near the
3 jury room, but if the Court security officer or the marshal
4 could --

5 THE DEPUTY CLERK: I'll get it.

6 THE COURT: Okay. Mr. Hampton will take care of
7 getting the laptop so that you all can check it.

8 I'll make some calls about a larger monitor. Are
9 there any thoughts about this? Does anyone have experience
10 with getting a larger monitor in there? I have not, as I said,
11 done that.

12 MR. RODRIGUEZ: Your Honor, we'll ask at the U.S.
13 Attorney's Office to see if we have any larger monitors
14 available that would be appropriate. We'll hopefully report
15 back, but none of us here have had this experience in this
16 courthouse yet.

17 THE COURT: Okay.

18 The question about racketeering: "We have some
19 questions about the laws explained, specifically related to the
20 definition of racketeering. Who can clarify this for us?" I
21 think I said, you can send out any questions in a note. I'm
22 not sure if you all think I should give any more guidance than
23 that.

24 MR. RODRIGUEZ: Not from the government.

25 MR. KAYE: I think it's perfectly fine to ask the jury

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1 to articulate what part of the charge they're having difficulty
2 with. And if they're able to identify a section, maybe we can
3 just reread to them what we've already read. Sometimes that
4 clicks and that does it. If not, then we can perhaps go beyond
5 that.

6 MR. RODRIGUEZ: Your Honor, our view is that they have
7 the charge back there, and so I think handling it the way that
8 your Honor first suggested would be our preference.

9 THE COURT: Okay.

10 For now, I'm going to leave it at is. The foreperson
11 was nodding when I said, if you have specific questions, you
12 can send a note about what that is, so -- after you've read the
13 charge I've already given. So, hopefully, that's clear enough
14 that they need to specify which section it is. Otherwise, I
15 may clarify that in the morning once they're all here.

16 And highlighters: That we can do.

17 Anything else for tonight?

18 MR. KAYE: No, your Honor.

19 MR. RODRIGUEZ: No, your Honor. Thank you.

20 THE COURT: Have a good night, everyone.

21 (Adjourned to October 2, 2018 at 9:30 a.m.)

22 * * *